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Thompson, Benjamin

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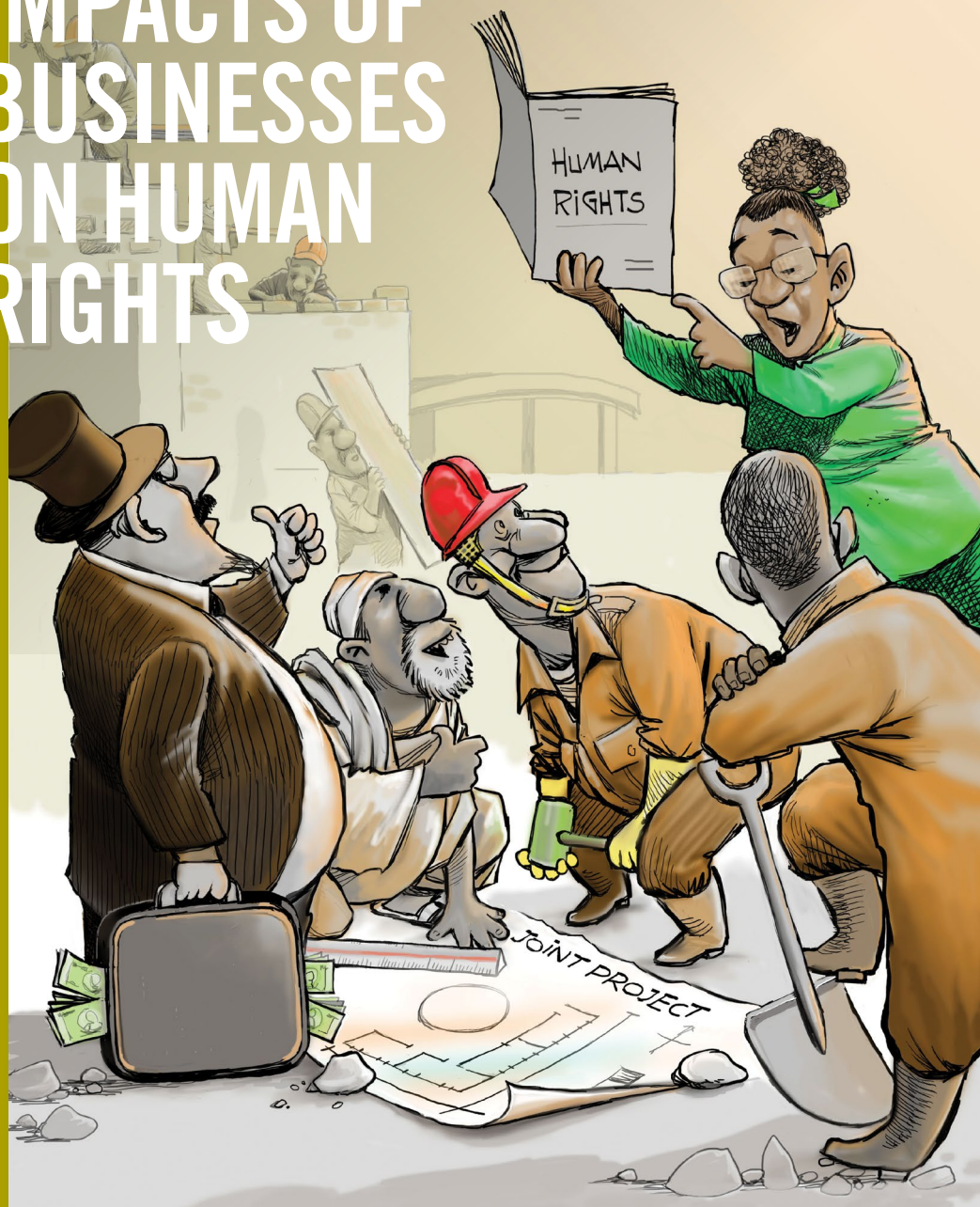
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BIASHARA NA HAKI IMPACTS OF BUSINESSES ON HUMAN RIGHTS

Part one: Knowing Your Rights



AMNESTY
INTERNATIONAL



BIASHARA NA HAKI

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Illustrations: Samuel Mwamkinga (*Jo'une samm*), Tanzania

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HURICAP

PO Box 1968

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The Netherlands

Email: huricap@amnesty.nl

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BIASHARA NA HAKI **IMPACTS OF BUSINESSES ON HUMAN RIGHTS**

Part one: Knowing Your Rights

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Amnesty International

Amnesty International is a global movement of more than 7 million supporters, members and activists in more than 150 countries and territories who campaign to end grave abuses of human rights. Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights standards.

Amnesty International is independent of any government, political ideology, economic interest or religion – we are funded mainly by our members and public donations. This handbook series has been developed and produced by the Human Rights Capacity-Building Programme (HURICAP) of Amnesty International Netherlands. HURICAP strengthens the capacity of human rights organisations and activists in Africa and the Middle East with the aim to help them be more effective in defending the rights of their communities. For more information and to download publications go to www.amnesty.nl/media/huricap.

The *Biashara na Haki: Impacts of Businesses on Human Rights* series seeks to respond to concerns raised by HURICAP's local partners in Africa that there are insufficient human rights education materials aimed at local non-governmental organisations (NGOs) and community-based organisations (CBOs) in relation to corporate-related human rights issues. This handbook series follows an extensive consultation of various actors regarding what form such capacity-building materials should take (see acknowledgements).

Part one: Knowing your rights aims to introduce its readers to international business and human rights standards and their application to specific human rights issues. It should be read in conjunction with *Part two: Taking action* which will provide users information on how to incorporate business and human rights into their work.

The book assumes its readers will already be familiar with the concept of human rights and the main human rights standards and bodies. It can be read in conjunction with HURICAP's handbook series on economic, social and cultural rights – *Haki Zetu ESC rights in Practice* – and HURICAP's *Ukweli* series on monitoring and documenting human rights violations in Africa.

Acknowledgements

This book was researched and written by Benjamin Thompson. He is currently pursuing a PhD in business and human rights at Tilburg University, specialising in mechanisms businesses can design to listen and respond to community grievances. Formerly, Ben has worked as a Programme Officer for Pax for Peace helping co-ordinate the work of Pax, Amnesty International Netherlands and Oxfam Novib on the Dutch Banking Sector Agreement on international responsible business conduct regarding human rights, a position partly funded by Amnesty International Netherlands. He has also previously worked for Utrecht University where he taught courses in international and European law and worked as a researcher on a project on extraterritorial jurisdiction.

The work on this booklet was done by Ben on a consultancy basis, and the views expressed do not necessarily reflect Amnesty International's policy. At numerous points in the book, reference is made to Amnesty International's positions on various issues based on his interpretation of public statements made by Amnesty International, the original sources of which are referenced. For more information on Amnesty International's input into the international discourse on business and human rights, please visit Amnesty International's website: www.amnesty.org.

Jolanda Groen, who is principally responsible for the Biashara na Haki: Impacts of Businesses on Human Rights series, contributed to the drafting of the handbook throughout the writing process. Jolanda is currently responsible for monitoring and evaluating HURICAP's country programmes and for setting up a capacity-building programme on Business and Human Rights. Before that she (co)-managed HURICAP's country programmes in Mali and in the Democratic Republic of the Congo (DRC). She previously worked as a programme officer for the United Nations Non-Governmental Liaison Service in Geneva, where she contributed to promoting constructive engagement and co-operation between the UN system and NGOs/CSOs on substantive issues of the United Nations (UN) agenda, such as sustainable development, human rights, climate change, and the post-2015 development agenda.

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Introduction

The role of businesses with respect to human rights has become an increasingly important issue due to the growing awareness of the negative impacts that businesses, in particular international businesses, can have on people's enjoyment of their human rights. The devastating stories of the Ogoni people in Nigeria, the 1984 Bhopal disaster in India and the 2013 Rana Plaza collapse in Bangladesh shocked many around the world. Yet, these are just a few outstanding examples of the growing business-related human rights abuses taking place across the globe. This has caused many to discuss the roles and responsibilities of businesses in relation to human rights.

International human rights standards have traditionally only placed obligations on governments. However, the increasing impacts of businesses on the enjoyment of human rights placed business and human rights on the agenda of the international community. Over the past decade, the United Nations has been considering the scope of business' human rights responsibilities and exploring ways for businesses to be held accountable for their impacts on human rights. On 16 June 2011, the UN Human Rights Council endorsed Guiding Principles on Business and Human Rights for implementing the UN "Protect, Respect and Remedy" Framework, providing – for the first time – a global international standard for preventing and addressing the risk of adverse impacts on human rights linked to business activity. As a result of this process, there is now greater clarity around the respective roles and responsibilities of governments, businesses and other actors with respect to the fulfilment of human rights.

International standards should not be considered as an upper limit for what human rights advocates should campaign for. They are written and/or supported by States and they may set standards of conduct which various people will consider too low. However, the human rights framework is a powerful tool that communities and NGOs can use to persuade governments, businesses and other actors to fulfil their responsibilities with respect to human rights. This book aims to explain those international standards most relevant to businesses' impacts on human rights. While businesses can potentially have very positive impacts, this handbook focuses on the potential negative corporate-related human rights issues and the applicability of international standards to these issues.

This book (Part 1: 'Knowing your rights') is the first edition in the *Biashara na Haki: Impacts of Businesses on Human Rights* series, which is aimed at community-based organisations and human rights NGOs that potentially deal with business and human rights issues in sub-Saharan Africa. 'Knowing your rights' aims to explain human rights standards and their application to various actors, including States and businesses. This book will be followed by Part 2 in the *Biashara na Haki* series, 'Taking Action' which provides information, methods and tools for enabling users to put these standards into practice when protecting the rights of those adversely affected by businesses.

The Ogoni Case

Royal Dutch Shell (an Anglo-Dutch international business), more often known as just 'Shell', has been drilling oil in Nigeria in Ogoniland, a large tribal area inhabited by the indigenous Ogoni people, since the 1950s. During its operations, many human rights abuses occurred. Pipelines built over farm land left communities without access to the land which provided their livelihoods. Burning gas flares in the ground let polluted gases into the sky turning the rain acidic and affecting the health of people, animals and plants. Oil spills on the land and in the water killed livestock and fish and affected people's health.

Nigeria had laws that provided that Shell be responsible to clean up and compensate communities for the oil spills which it was responsible for. It was also required to pay compensation for any land taken from communities. However, the relevant government agencies lacked the funding and expertise to investigate human rights abuses and were regularly affected by corruption.

Kenule "Ken" Beeson Saro-Wiwa was a Nigerian poet and writer, as well as an environmental and human rights activist, who was one of the most articulate representatives of the Niger Delta communities. As a leading figure in the 500,000-strong Ogoni community in Rivers State, he advocated for the realisation of human rights and a clean and healthy environment.

He played a key role in drafting the 1990 Ogoni Bill of Rights, which highlighted the lack of political representation, pipe-borne water, electricity, job opportunities and local development projects. The Bill called for fixing the damage done to Ogoniland, recognising the Ogoni people's human rights and their fair share of the oil revenues. He was a founder and President of the Movement for the Survival of the Ogoni People (MOSOP), which pressed oil companies and the government to clean up the environment and pay adequate compensation and royalties to the oil producing regions.

Neither the government nor Shell recognised the Ogoni people's rights. In 1993, the Ogoni people protested and Shell withdrew from Ogoniland due to fear of assaults to its staff. The Nigerian government sent in security forces in response to the protests. These security forces burned villages, raped women and killed around 2000 people in Ogoniland between 1993 and 1995. There were several allegations that Shell was complicit in many of the human rights abuses committed during this period and Shell admitted to having paid a financial contribution towards these security forces.

In 1995, nine leaders of the Ogoni (including Ken Saro Wiwa) were detained and accused of murdering their Ogoni colleagues. A special military tribunal was set up which did not provide a fair trial. Ken Saro Wiwa and his colleagues were declared guilty and executed. This provoked international condemnation of both Shell and Nigeria, and it highlighted the role of international businesses in human rights violations.

Yet, more than 20 years on, injustice and violence still haunt the Niger Delta, and international businesses still play a large role in human rights violations and abuses throughout the continent.¹



Structure of this Book

Chapter 1 (Introducing Businesses and their Impact on Human Rights) seeks to explain businesses and their potential impacts on human rights. This section explains business and human rights issues without reference to the international human rights standards. The purpose of this section is to understand the following:

- Why the role of businesses (particularly international businesses) has become an increasingly important issue in recent times, particularly from the perspective of the sub-Saharan Africa context.
- What international businesses are, including some of the main ways international businesses are set up.
- What pressures exist on businesses to respect human rights.
- What impacts businesses can have on human rights, with attention paid to some of the key human rights issues in sub-Saharan Africa and also particular impacts on specific groups of people.

Chapter 2 (International Standards and the Role of Different Actors) will then introduce the relevance of international human rights law and international human rights instruments to businesses. The purpose of this section is to understand the following:

- The position of businesses in international human rights law, where human rights obligations exist primarily with the State.
- What key international standards exist with respect to business and human rights including the United Nations Guiding Principles on Business and Human Rights.
- Which actors are involved in ensuring businesses respect human rights, including the roles of governments, both at home and abroad, businesses themselves, International Organisations, financial institutions, international soft law initiatives, National Human Rights Institutions, multistakeholder and industry initiatives, civil society organisations and communities themselves.

Chapter 3 (Specific Human Rights Issues) will aim to describe the role and responsibilities of the various actors identified in chapter 2 in dealing with some of the specific business-related human rights challenges identified in chapter 1. The purpose of this section is to further understand the following:

- Labour rights issues.
- Damage to the environment (and impact assessments).
- Displacement of communities/Land Rights.
- Security arrangements.
- Armed conflict.
- Corruption.
- Access to remedy.

The book will conclude with the **Biashara Mbaya scenario** – a fictional scenario with questions which are answerable with knowledge in the handbook. The annexes to this book then include a resource annex which lists the key resources and actors involved in business and human rights and an answers annex which provides potential answers to the questions relating to the Biashara Mbaya scenario.

Meaning of Symbols



Boxes with this symbol are case studies. They provide examples of how the issues discussed in the book relate to real life events. All of the case studies in the book are real examples taken from Amnesty International's own reports and the reports of other actors.




These boxes provide explanations of a particular concept or instrument.



Boxes with this symbol present a summary highlighting certain aspects of a position Amnesty International has taken on the issues discussed in this handbook.



These boxes explain the differences between two similar but different concepts.

Boxes with the  symbol provide references for further resources (including international standards and literature) relating to the issues discussed in this handbook.

Boxes with bold borders guide the reader as to how to read the handbook.

Underlined words are words that are in the **glossary**. For instance, if the reader would like to know the meaning of terms such as investment or jurisdiction, then they can refer to the glossary for an explanation. The glossary is on pages 207-213. Many terms are also explained throughout the book.

DID YOU KNOW BOXES

provide examples of interesting facts about businesses and their role in Africa.

The **acronym list** on page 206 explains most common acronyms used in the book.

1)

BUSINESSES AND THEIR IMPACT ON HUMAN RIGHTS

Chapter 1 examines the impacts that businesses can have on human rights. It is divided into four sections:

- The causes of the increasing impact of businesses on human rights in Africa (section 1.1)
- How a business operates (section 1.2)
- How a business can impact human rights positively and negatively (section 1.3)
- The special impacts of businesses on specific groups of people (section 1.4)

Chapters 2 and 3 then look at the application of international human rights standards.

1.1 Why the impacts of international businesses have increased in Africa

Before the question of how businesses can affect people's enjoyment of their human rights, it is important to first understand the growing power of international businesses. This evolved around the need for foreign investment, a lack of adequate regulation, an increase in investment treaties/contracts and the ability of international businesses to escape the supervision of any one State. These are discussed below.

A State is a country or territory organised under a single government. When talking about a State's obligations, this handbook is therefore referring to the government's obligations.

1.1.1 The need for foreign investment

After independence from colonialisation, some African States took control over businesses which were owned by Western investors by adopting so-called 'nationalisation' policies. Consequently, Western investors became afraid that, if they invested in African countries again, the governments of these countries could arbitrarily take their investment away or pass laws that negatively affect their business activities in the country. Hence, many African States struggled to attract investment from abroad.

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INVESTMENT

Some (business) projects need large amounts of money to be set up. Examples are dams, bridges, oil rigs, mines and airports. Different actors (States, businesses and International Financial Institutions) spend money to set up a project in order to receive benefits later. This is called investment.

In response, several International Financial Institutions, including the International Monetary Fund (IMF) and the World Bank Group, required certain States to change their policies around the investment of businesses in their countries in order to improve their economies (under 'structural adjustment programmes') in exchange for loans. For instance, they requested States to reduce government control; to cut the amount spent on public services; to put down wages; to lower tariffs on imports; to promote privatisation and free trade and to remove regulations and other restrictions from businesses. In some cases, States were even required to reduce the laws that existed to protect the environment and human rights. All these changes aimed to make it more favourable for businesses to (re-)invest in these countries.

INTERNATIONAL FINANCIAL INSTITUTIONS

International Financial Institutions are international organisations set up by multiple States to provide, amongst other things, loans for investment. They include organisations such as the World Bank Group, the European Investment Bank (EIB) and the African Development Bank (AfDB).

At the same time, this resulted in States becoming increasingly dependent on international businesses. This led to them being less willing to prevent international businesses for committing human rights abuses and to investigate and punish business-related human rights abuses. For instance, Cameroon made cuts to its forestry budget which led to a failure for it to oversee whether businesses carrying out logging were doing it legally, and Tanzania lowered its budgets to supervise mining activities despite a vast increase in mining at the same time.²

There are many terms for different types of businesses (companies, corporations, business enterprises, global businesses, multinational enterprises, transnational enterprises, etc.). To keep things simple, this handbook refers to all types of business enterprises as 'businesses'. When specifically discussing businesses that operate in multiple States, the term 'international businesses' is used.

The handbook will often refer to international businesses by their 'trading names' which may be different from the legal name of the business. For instance, in the Ogoni case (see page 12), the business was called Shell Petroleum Development Company of Nigeria (SPDC). It was partly owned by Royal Dutch Shell plc (which is legally incorporated in the United Kingdom (UK) but has its headquarters in the Netherlands) and the Nigerian National Petroleum Corporation (which was a business owned by the Nigerian State). It was therefore a Joint Venture and a legally distinct business from Shell. The handbook refers to this business as Shell, both to keep things simple and to avoid businesses hiding their responsibility behind legal arrangements (see corporate veil on page 169).

1.1.2 Lack of effective regulation

Government bodies set up to regulate businesses may not have enough funding or expertise to do so effectively. In such situations, regulatory bodies often rely on information from the business itself. For instance, in Nigeria, it was reported that the government bodies responsible for the regulation of oil businesses did not have enough technical expertise to carry out inspections and mostly relied on information from oil businesses themselves. Businesses may also have too much influence in their deals with governments, particularly where governments lack the ability to negotiate. This was the case in Liberia (see next box).



AN INTERNATIONAL MINING BUSINESS'S NEGOTIATIONS WITH POST-CONFLICT LIBERIA

In Liberia, after its civil war, the new government signed an investment contract with a mining business, Mittal Steel, to mine its iron ore. Because the business was much better prepared for the negotiations than the government officials, the contract ended up being much more in favour of the business than the country. The contract effectively allowed the business to control most of the decisions around the mine including what taxes should be paid, the prices paid for the iron, land rights and private security forces. Global Witness, a civil society organisation, campaigned to have this contract renegotiated with fairer conditions. Mittal Steel and the Liberian government did this in 2007, although still not in line with best practice.³

1.1.3 Investment treaties and investment contracts

Investment treaties and investment contracts were introduced to encourage businesses to make investments in African States, as well as other States. An investment treaty is an agreement between the State where the business is carrying out its activities (host State) and the State where the business is based (home State). An investment contract is between the State where the business is carrying out its activities (host State) and the business itself. Investment treaties/contracts often contain rules that apply to the host State. For instance, a host State may be required not to place certain taxes (or fees) on businesses or pass new national laws that a business would not be aware of before investing in the country. In various cases, signing investment treaties/contracts also makes it more difficult for host States to protect people's human rights or the environment. An example is below. Investment treaties are discussed further on page 64.



SOUTH AFRICA'S BLACK EMPOWERMENT ACT AND A BILATERAL INVESTMENT TREATY

Luxembourg and South Africa signed an investment treaty to allow businesses from Luxembourg to operate in South Africa and be protected from certain kinds of interference from the South African government. The South African government passed the Black Economic Empowerment Act in order to address the inequality between black people and white people following the end of apartheid. It aimed to transfer South Africa's wealth from the minority of white people to the majority of its citizens and required that black people had a greater role in the economy. One of the requirements was that mining businesses must be at least a quarter owned by black South Africans.

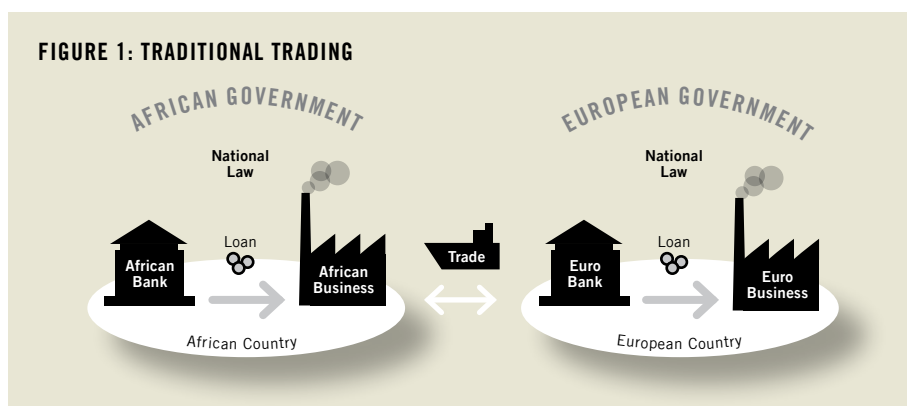
Luxembourg sued South Africa under its investment treaty because this threatened their mining businesses' interests in South Africa. The two governments entered into negotiations and agreed that the Luxembourg businesses should be mostly exempt from rules

requiring businesses to transfer ownership to black South Africans. A report by the South African government concluded that the government failed to properly consider human rights when signing the treaty. After reviewing its treaties, the South African government cancelled its investment treaty with Belgium and Luxembourg.⁴



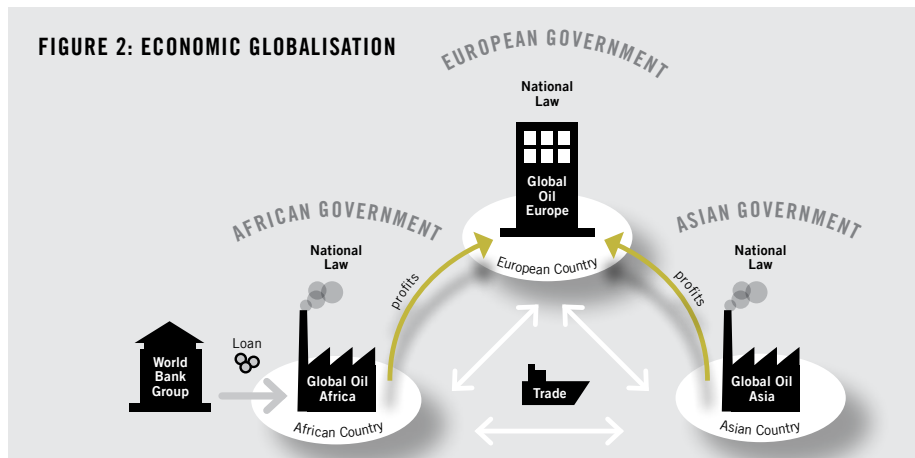
1.1.4 The ability of businesses to escape the supervision of any individual State

Over the last few decades there has been an increase in international businesses. This is part of what is often referred to as economic globalisation. Before economic globalisation, a business was mainly established in the State in which it planned to operate, often with the financial support from a national bank. As such, the business was bound to national legislation. International trade was concentrated around trade between companies that were based in different countries. These businesses were still largely regulated by the government of their respective countries. For instance, in the picture below, the African government has exclusive control over the African bank and business and the European government has exclusive control over the European bank and business. Trade is between States.



The era of economic globalisation saw a dramatic increase in the number, size, wealth and power of international businesses. These businesses, which work worldwide, are able to trade amongst themselves, and they can receive loans from multiple banks or from international financial institutions like the World Bank Group. As such, international businesses are no longer bound to the regulation of one single State. No one State has the power to exercise complete control over international businesses. The UN Special Representative on Business and Human Rights, John Ruggie, described these areas where States are unable (or unwilling) to regulate businesses as ‘governance gaps’.⁵

In the figure below, the international business, ‘Global Oil’, is a collection of businesses not based in any one State. ‘Global Oil Africa’ receives loans from the World Bank Group, an international organisation which does not fall under the jurisdiction of any one State. The parent business ‘Global Oil Europe’ has control over ‘Global Oil Africa’ and over ‘Global Oil Asia’. Trade is still carried out between the countries, but some of the money involved is transferred between Global Oil’s different businesses. While each State is able to regulate part of Global Oil, no State has complete control over all of Global Oil’s activities.



- Amnesty International, *Injustice Incorporated: Corporate Abuses and the Right to Remedy* (Amnesty International 2014) pages 173 to 191. www.amnesty.org

i

THE UN SPECIAL REPRESENTATIVE ON BUSINESS AND HUMAN RIGHTS

The role of the UN Special Representative on Business and Human Rights, John Ruggie, was to research businesses and human rights. He wrote the Respect, Protect, Remedy Framework and the UN Guiding Principles on Business and Human Rights which were welcomed and endorsed by the UN Human Rights Council in 2011. They went through an extensive consultation process with governments, businesses and civil society organisations. This represents a global international standard for preventing and addressing the risk of adverse impacts on human rights linked to business activity.

To fully grasp the business and human rights debate, it is important to understand what a business is and how a business operates to achieve its objectives. This section will seek to explain the complex nature and operations of international businesses (section 1.2.1), it will explore the common relationships businesses can have with other businesses or with other actors (section 1.2.2), and it will explain what pressures exist on international businesses to respect human rights (section 1.2.3).

A focus on international businesses is chosen as these businesses often have the power and means to commit serious human rights abuses due to the existing governance gaps, as explained on pages 22-23. This is not to say that nationally and locally operating businesses cannot commit human rights abuses: they can. Some information you will read in this handbook may therefore also be relevant when dealing with nationally and locally operating businesses.

1.2.1**What an international business is**

A business is an initiative that is set up with the aim to make money, generally from selling products or providing services. It can be owned by a State, by a group of people, by a single person or it might be owned by a mixture of a State and people. Businesses may also own each other. People who own parts of a business (or shares) are called shareholders.

In law, a business often has its own 'legal personality', which means that a registered business is treated similarly to an ordinary person. It is recognised as its own person who can make contracts with people, own its own property and pay its own taxes. In such cases, when you deal with a business, you are legally not dealing with any individual person in the business, but with the business itself.

Unlike a local or national business, which ordinarily operates in one State, an international business is a business that acts in multiple States. It may be one business owning (smaller) businesses in different States or it may be a looser collection of different businesses working together with the same interests (e.g. via strategic alliances). Even though these businesses act as one business, they are treated as separate under the law.

While international businesses are often composed of many businesses which carry out activities in various States worldwide, they often have a headquarters in one State (their home State) which takes responsibility for the overall success of the international business. It will deal with issues that affect the whole business such as overall strategic planning, communications, tax arrangements, legal issues, marketing and human resources. They sometimes rely on the governments of their home States to negotiate with other States in order to ensure they offer the best environment for them to do business.

While an international business may exercise a lot of power, it is not a State. It does not have the authority to govern communities, and it does not have the same human rights responsibilities as a government. In situations of privatisation, however, privately-owned businesses may perform public roles (e.g. service delivery) or exercise public powers (e.g. private security firms). Privatisation is when the government decides to hand over some of the responsibilities and/or activities which are traditionally government responsibilities (e.g. the provision of drinking water), to a private business, because it has decided that businesses can provide these activities/services more efficiently. It is essential, however, that the State ensures that any public services that are privatised (carried out by businesses) are run responsibly, so that the State meets its human rights obligations.

1.2.2 Common business relationships

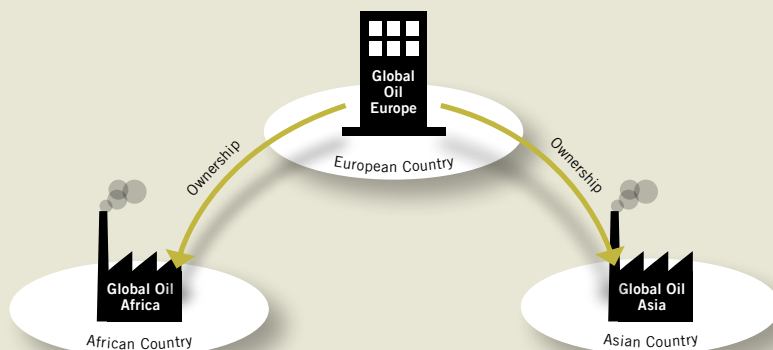
Below are five common business relationships: parent-subsidiary, Joint Ventures, State-owned business, finance relationships and supply chains. This list is not exhaustive and there are other types of arrangements.

The Parent-Subsidiary relationship

Often, an international business sets up smaller businesses in each country it operates in which it owns, either on its own or along with others. These smaller businesses are called subsidiaries. The business that owns the whole or part of these businesses is referred to as their parent. For instance, the Coca-Cola Company is the parent of Coca-Cola Nigeria Limited, which is its subsidiary.

FIGURE 3: PARENT-SUBSIDIARY RELATIONSHIP

Here is a fictional business, Global Oil Europe, which is the parent of two subsidiary businesses: Global Oil Africa and Global Oil Asia. People would refer to all three businesses as 'Global Oil'.



State-owned businesses

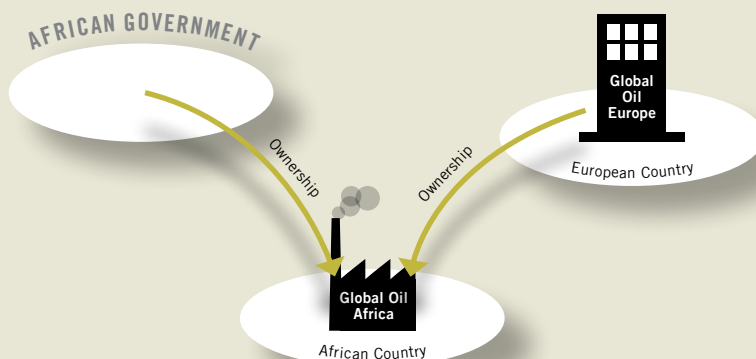
A State-owned business is a business owned by the State. Under international law, such businesses are considered organs of the State and therefore any actions taken by a State-owned business are considered actions of the State itself. For instance, Air Tanzania Company Limited is an airline business which is completely owned by the government of Tanzania. Some businesses are only partly owned by a State and are sometimes still referred to as State-owned businesses.

Joint Ventures

A Joint Venture is when a business is set up in a country and is owned by more than one actor. A Joint Venture could be a business project owned by multiple businesses, or when the business is owned partly by the State and a business (or businesses).

FIGURE 4: A JOINT VENTURE

Here Global Oil Africa is a Joint Venture between Global Oil Europe and an African government. People would refer to both Global Oil and Global Oil Africa as 'Global Oil'.



Finance Relationships

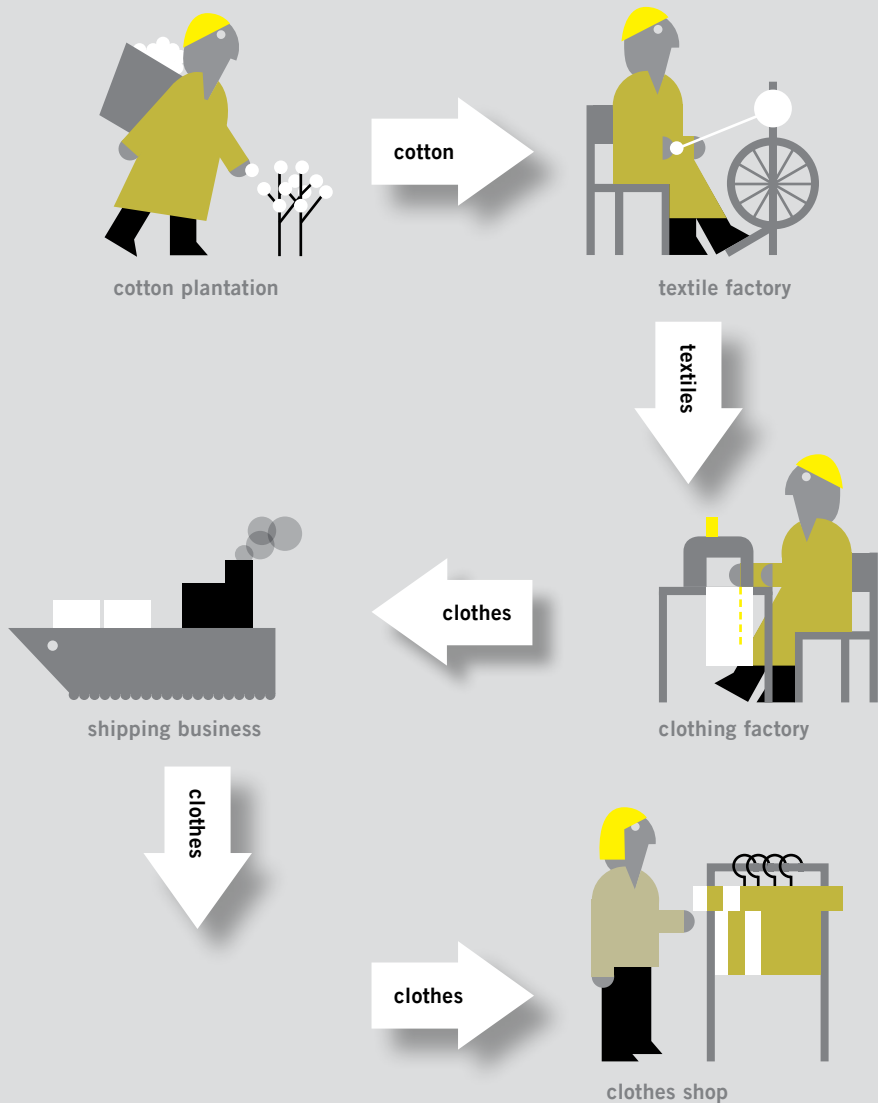
Generally a business will require a loan before starting a project. This is the case with (international) businesses where there is a project that has very high start-up costs (such as building an oil rig or exploring for minerals). In such cases, a bank (or International Financial Institution) will loan the business money which the business will be expected to pay back. It may also insure the project.

Supply chains

Almost all businesses have supply chains. Supply chains refer to the other businesses that supply a business with goods and/or services, and it also refers to all the businesses that supply the suppliers with goods, the businesses that supply them and so on.

FIGURE 5: SUPPLY CHAINS

A simplified clothing supply chain. First there is a cotton plantation which supplies cotton to a textile plant which supplies textiles to a clothing factory which supplies clothing to a shipping transport business that supplies the clothes to a clothes shop abroad. This series of relationships is the clothes shop's supply chain. In a supply chain, the businesses do not have ownership relationships with each other but are connected purely through transactions.



Below is an example of a large scale international business project occurring across two States.



BUSINESS RELATIONSHIPS: THE CHAD-CAMEROON OIL PIPELINE

ExxonMobil, an oil business, planned to drill for oil in the southern Chad region of Doba. In order to transport the oil, it decided it needed to build an oil pipeline between Doba and an offshore vessel near the town of Kribi in Cameroon. ExxonMobil partnered with two other oil businesses (Petronas and Chevron) to drill for oil in Doba. In order to do this, the three businesses set up a Joint Venture in Cameroon called Esso Exploration and Production Chad Inc (EEPC) which they all owned together.

For the building of the pipeline, two companies were established. One in Chad called the Tchad Oil Transportation Company S.A. (TOTCO) and one in Cameroon called the Cameroon Oil Transportation Company S.A. (COTCO). TOTCO was a Joint Venture between the oil companies ExxonMobil, Petronas and Chevron and the Chad government. COTCO was a Joint Venture between ExxonMobil, Petronas and Chevron and the Chad and Cameroon governments. The International Finance Corporation (part of the World Bank Group) and European Investment Bank both financed part of the overall project through loans to TOTCO and COTCO.

Even though, under the law, there were three separate businesses operating along the Chad-Cameroon Oil Pipeline, EEPC, TOTCO and COTCO, in reality they often worked together like one business and were assisted by ExxonMobil, Petronas and Chevron.⁶

This example shows the complexity of business relationships in relation to a large business project like the Chad-Cameroon Pipeline. One of the obstacles that civil society organisations and community-based organisations have in advocating for the realisation of human rights in relation to businesses is that business relationships can be very difficult for people to understand without access to the relevant information.

In the above case, ExxonMobil, Petronas and Chevron are all parents of EEPC, TOTCO and COTCO. EEPC, TOTCO and COTCO are all subsidiaries of ExxonMobil, Petronas and Chevron. EEPC, TOTCO and COTCO are also all Joint Ventures. EEPC is a Joint Venture of three businesses (ExxonMobil, Petronas and Chevron). TOTCO is a Joint Venture between three businesses (ExxonMobil, Petronas and Chevron) and a State (Chad). COTCO is a Joint Venture between three businesses (ExxonMobil, Petronas and Chevron) and two States (Chad and Cameroon). The World Bank Group and European Investment Bank have financing relationships with TOTCO and COTCO, but not with EEPC. EEPC drills the oil and supplies it to TOTCO which then pipes the oil to COTCO which then pipes the oil to the offshore vessel. In reality, these businesses are working together and are better understood as working as part of a single international business.

DID YOU KNOW

By one estimate, ExxonMobil has had revenues over sixty times larger than the Cameroon government and a hundred times larger than the Chad government.⁷

1.2.3 What pressures motivate a business to respect human rights

As we have seen in part 1.1, it can be difficult to regulate certain businesses, particularly international businesses, under national law. Like a State, a business may not be enthusiastic about becoming accountable for human rights abuses. After all, a business' core objective is making profit. Hence, as with a State, it is important to understand what pressures exist on a business that may affect a business's willingness to take action to ensure their activities respect human rights. There are five main financial reasons that might encourage a business to accept its human rights responsibilities:

- Reputation
- Access to finance
- Legal license
- Social license
- Lawsuits/Fines

Understanding what pressures can motivate a business to respect human rights from the perspective of a business is often called the 'business case' for respecting human rights.⁸

Reputation

Maintaining a good reputation as a responsible business can be helpful for a business's profits. Some people who buy shares (become part owners) in businesses want the business to act in a more responsible way. Some people will only buy from a business or work for a business if they think that the business is responsible. Some governments will prefer to do business with businesses that have a reputation for good practices with respect to human rights. Hence, for many businesses, negative publicity can negatively affect their profits, and so they will try to avoid it through doing good business.



A SPORTSWEAR BUSINESS IMPROVING ITS REPUTATION

Nike, a sportswear business that buys from factories around the world, faced damage to its reputation following international campaigns highlighting human rights abuses in the factories in their supply chain. These human rights abuses included poor health and safety standards, low pay, forced overtime and child labour. As a result, some people stopped buying Nike's products. In response, Nike made large efforts to prevent labour rights abuses in the factories in its supply chain, including putting labour rights requirements in supplier contracts, monitoring factories that provided goods to them and terminating relationships with factories that committed labour rights abuses. This did not stop all the labour rights (and other human rights) abuses committed in the factories, but, after people started seeing Nike was making an effort to stop these abuses, people continued buying their clothes.⁹

Access to Finance

A business must also consider its reputation amongst investors. Businesses investing in large-scale infrastructure projects (such as large-scale construction, mining, oil drilling and logging), generally require financial services such as loans and insurance. Often these loans will come from International Financial Institutions. Businesses with a good human rights reputation may find it easier to receive finance from financial institutions: businesses which respect human rights are less likely to suffer problems as a result of lawsuits/fines, community disruptions or a non-renewal, reduction or cancellation of their legal license (see below).



A NORWEGIAN INVESTMENT IN AN INDIAN BUSINESS WITH CHILD LABOUR

An Indian business involved in farming, Zuari Agro Chemicals, received finance from Norges Bank, a State-owned Norwegian bank. The India Committee of the Netherlands (ICN) published research in 2010 showing that approximately 230,000 children under fifteen years were working in Indian seed production. The Norwegian bank required the Indian business to take steps to prevent child labour in its supply chains. The Norges Bank later withdrew its finance (1.8 million Euros) to the Indian business due to human rights concerns, including concerns regarding child labour.¹⁰

Legal License

Businesses must also consider their relationship with the government. With certain business projects, such as in mining, oil extraction and logging, businesses must negotiate a contract with the State that allows them to use and control the land they require for their operations. This contract is referred to as a legal license. Terms used to describe legal licenses include 'risk agreements', 'concessions', 'production sharing agreements/contracts' and 'service contracts'. If a business does not respect human rights, the government may refuse to offer new legal licenses, not renew existing legal licenses once they are completed or, in extraordinary cases, cancel the existing legal license.



AN OIL BUSINESS'S OIL CONCESSION IN CHAD

A Chinese oil business, China National Petroleum Corporation (CNPC) started drilling for oil in Chad in 2003. It reportedly spilt thousands of barrels of oil at one of its oil sites. This led to serious damage for the environment. In 2013, the Chad government suspended the oil concession (legal license) of CNPC. It also ordered CNPC to pay 1.2 billion US dollars in compensation and stated that CNPC would not get its legal license back until it met the requirements of Chad's environmental laws.

Following this, CNPC paid the Chad government 400 million US dollars in compensation. It negotiated a new legal license which provided the Chad government a greater share in the income from the oil.¹¹

Social license

Where large scale developments affect communities directly, there should be approval from the communities for the project. This approval is called a social license and may be drafted into a memorandum of understanding or legally binding document between the community and the business. In the case of Shell in Ogoniland (see page 12), Shell did not have the approval of the Ogoni people for several reasons including many human rights abuses committed against the Ogoni people. The Ogoni people protested against the business and Shell had to withdraw from Ogoniland. Shell lost its social license to operate and had to stop its business activities. The government then took away its legal license.



- The Corporate Social Responsibility Initiative at Harvard Kennedy School put together a video on an oil business's attempts to get a social license with the community. It explains how they tried to have meaningful conversations and build a partnership with the community. It tells the story from the perspectives of business and community members. It's called 'The Only Government We See' and is available at www.accessfacility.org.

Where businesses do not have a social license with nearby communities or their workers, their profits can be negatively affected. For instance, strikes and protests can result in temporary, or even permanent, suspensions to a business's operations which can have a major impact on their profits. Where a business's activities result in community conflict and a loss of profits this can also result in lasting damage to their reputation.



THE COST OF COMMUNITY CONFLICT

The UN Special Representative on Business and Human Rights, who had research carried out on the costs of community conflict for mining businesses, found that community disruptions can result in significant losses for some large business projects: in some cases between 20 to 30 million US dollars per day.¹²

Lawsuits/Fines

Where business systematically disrespect human rights, they are likely to also breach national law. When businesses violate national law, they may be held liable in courts, and they may also be required to pay fines by regulatory bodies. In such cases, this will reduce the profits of the business. By ensuring they respect human rights, businesses may therefore maintain/increase their profits.



- Institute for Human Rights and Business, 'Investing the Rights Way: A Guide for Investors on Business and Human Rights', pages 8-10. www.ihrb.org
- Global Compact Network Netherlands, 'How to do business with respect for human rights? A Guidance Tool for Companies', pages 29-32. www.banktrack.org

1.3 How a business can impact human rights

The human rights impacts of businesses can be both positive and negative. This section will first look at some of the positive contributions businesses can make (section 1.3.1), as well as the potential obstacles to realising these contributions (section 1.3.2). It will then discuss the potential negative impacts businesses can have on human rights including labour issues (section 1.3.3), damage to the environment (section 1.3.4), displacement of communities/land rights (section 1.3.5), businesses and security (section 1.3.6), businesses and armed conflict (section 1.3.7), corruption (section 1.3.8) and problems with access to remedy (section 1.3.9).

1.3.1 Businesses' potentially positive contributions

The UN Special Representative on Business and Human Rights described businesses as the major source of investment and job creation. In his view, businesses can help generate economic growth, which may in turn reduce poverty. In fact, when managed well, businesses can benefit society in various ways: businesses supply goods and services for which demand exists, they create jobs throughout their supply chains, they bring innovation (e.g. by investing in new technologies) and they develop the skills of their workers. With more jobs, more people will earn a salary, which they can use to pay for their daily essentials (e.g. food and clothing), as well as other goods and services. This again will create demand for goods and services, and, as a result, businesses may flourish, increase production and create even more jobs.

In addition, international businesses may make substantial contributions to the country's public infrastructure and services. Indirectly they contribute by paying taxes, fees and royalties to the government, who can invest these resources in public services. Directly, international businesses can decide to invest in public infrastructure.

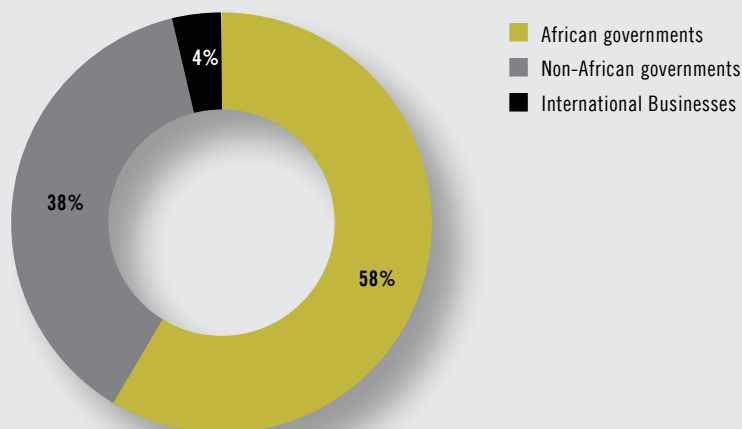
For instance, in 2014, it was estimated that 74.5 billion US dollars were invested in sub-Saharan Africa on projects relating to energy (distribution of electricity and gas), water and sanitation (e.g. irrigation, water supply, waste processes), transport (e.g. airports, ports, roads), information and communication technology (e.g. broadband, mobile network, satellite), as well as other infrastructure initiatives. As can be seen in the estimated breakdown below, four percent of this investment came from international businesses.

DID YOU KNOW

In 2013, approximately 87 percent of the money the Nigerian government received in taxes was from oil businesses.¹³

FIGURE 6: ESTIMATED INVESTMENT IN SUB-SAHARAN AFRICA

*Infrastructure Initiatives in 2014*¹⁴



EMERGING AFRICA INFRASTRUCTURE FUND (EAIF)

The EAIF collects funding from different actors including banks. By the end of 2011, it had helped finance 365 projects, including Seacom, the undersea fibre optic cable along the coast of East Africa, three container ports in Senegal and the Rabai power plant in Kenya. These projects have the potential to make a positive contribution to the socio-economic situation in these countries.¹⁵

Moreover, various businesses undertake charitable initiatives, e.g. by initiating healthcare projects or building schools. According to some of these businesses, spending money on charitable projects can be more effective than paying money to governments, as the latter may suffer from widespread corruption. Through philanthropic initiatives, they can ensure that their money reaches local communities. Community development projects work best when businesses design them with the participation of local communities.



A COMMUNITY DEVELOPMENT PROJECT

The Akassa are a remote fishing community in Nigeria's oil producing Niger Delta. Oil business Statoil wanted to establish a social license to operate with the Akassa community to ensure that its operations ran smoothly. Together with the oil business BP and the non-governmental organisation Pro Natura International, it initiated community-based participatory approaches to design the Akassa Community Development Project. The programme focussed on key issues such as the alleviation of poverty, development of infrastructure and management of natural resources. The project helped develop a micro-credit system, a primary healthcare system and education in literary skills, computer skills, sewing and the maintenance of engines. It provided roofing for schools and the construction of roads and bridges.¹⁶

The positive contributions of businesses increase where the State has appropriate rules, customs and institutions. Businesses themselves benefit from appropriate rules, customs and institutions because businesses require predictability in order to make informed decisions. Many public goods (such as education and healthcare) cannot be provided by businesses alone. Hence, strong government institutions are required to provide the public goods that society needs.

1.3.2 Introducing potential risks and disadvantages

Sometimes the positive contributions that a business may make will be negatively affected by certain factors. As discussed in section 1.1, international businesses have a lot of power. They may exercise this power to avoid certain rules and regulations in favour of making higher profits, often at the expense of the government's ability to uphold human rights. For instance, the financial contribution that businesses make to States in taxes, fees and royalties can be affected by businesses' efforts to avoid paying the correct amount. One example is transfer mispricing (see box below). By doing so, the government will have less tax income and therefore fewer resources to provide the services needed to fulfil its citizens' social, economic and cultural rights.

i

TRANSFER MISPRICING

Transfer pricing is a term used when an international business, which is legally divided into smaller businesses, has one of its smaller businesses buy goods from another of its smaller businesses. The price that the business pays for the good that it buys from itself is called the transfer price. Where an international business buys from itself at a price which is cheaper or more expensive than the proper price, this is called 'transfer mispricing'.

For instance, an international mining business, which is a collection of different businesses all over the world, could decide to start mining in Uganda. It could establish a mining business in Uganda which is legally set up as a different business, even though it behaves as part of the international business. It could then have this mining business sell the mined minerals to one of its other businesses at a very cheap price. This other business could then sell the minerals to customers at a much higher price. This means that the international business is making much more money from its mining operations in Uganda in comparison to the prices which its Ugandan mining business is officially selling the minerals for. If the Ugandan government is taxing the Ugandan mining business based on the profits it makes from the transfer price, then the Ugandan government will be getting much less tax than it should receive. This is one of the ways some international businesses avoid paying tax.¹⁸

Businesses have the tendency to be great salesman: they may make great efforts to ensure that it looks like their activities will bring positive contributions to the economy and society (more jobs, money and development funds/initiatives). In many situations, however, these contributions are presented as much more positive than they actually will be. For instance, sometimes businesses may spend money on philanthropic projects to get the support of the community, whilst also avoiding paying tax or polluting the environment.

DID YOU KNOW

Africa loses about twice as much money in unpaid taxes as it receives in aid. The amount of money lost is estimated to be an average of \$63 billion per year between 2008 and 2010.¹⁷

Furthermore, reliance on international businesses, especially extractive businesses, has sometimes been associated with a lack of development and investment in public services. Some countries that have a lot of natural resources to exploit develop less than similar countries with fewer natural resources. This is often referred to as the 'resource curse'. The 'resource curse' may result from a number of different effects from international investment. When large amounts of revenue are made from natural resources, the value of a country's currency may go up. This can lead to other sectors, such as agriculture, struggling to sell their goods abroad because they become more expensive; this is often referred to as 'Dutch disease'. If a country is dependent on revenue from natural resources, then changes to the international market price of these resources will have a huge impact on the national economy. This can result in sudden decreases to public services and an overall lack of stability.

The 'resource curse' can also lead to political problems. When governments are *not* dependent on natural resources, they must depend on taxation of their citizens, who can demand effective public services in return. Where governments receive most of their revenues from natural resources they are less dependent on their citizens. This can decrease their incentive to provide good governance and public services to their citizens. In some cases, the 'resource curse' can lead to, or contribute to, armed conflict as different groups compete for the income from natural resources.



THE RESOURCE CURSE IN THE NIGER DELTA

Over the last fifty years, the Nigerian government has earned billions of US dollars from oil extraction. Oil accounts for nearly 80 percent of the Nigerian government's national budget. Because the Nigerian government often fails to respect, protect and fulfil the human rights of its people, communities turn to oil businesses for jobs and essential services. Local politicians encourage communities to look to businesses rather than the government to provide such services even though the government is required to provide for the realisation of human rights under international human rights law.

The relationship between businesses and communities is increasingly governed by agreements called Memoranda of Understanding (MoUs). Under these agreements, businesses provide development projects for communities and communities provide a peaceful operating environment for businesses. Amnesty International has recommended that the Nigerian government ensures that agreements between the communities and businesses do not in any way undermine human rights and emphasised that it is the government's obligation to devise strategies to progressively achieve full realisation of the economic, social and cultural rights of the people of Nigeria.¹⁹

Hence, when not well managed and/or regulated, businesses can do more harm than good. This also counts for seemingly innocent initiatives, such as philanthropic projects, aiming to contribute to a community's development. Although their objective may be good, such business initiatives still risk having negative impacts on human

rights when not well designed and implemented. For instance, they may provide free HIV medication programmes, while not respecting their staff's labour rights or they risk making communities dependent on them for basic services. This undermines the role of the State in realising human rights and leads to unhealthy power relationships between the business and communities. The UN Special Representative on Business and Human Rights supports positive initiatives carried out by businesses. However, he emphasised that positive initiatives taken by businesses cannot be used to 'trade-off' on adverse human rights impacts. You cannot cancel a bad act by doing a good one.



PHILANTHROPY BY BUSINESSES

Some community development projects, such as the Akassa Community Development Project on page 35, have been effective in involving communities meaningfully, identifying priorities and implementing local solutions. However, other community development projects have failed to meet community expectations. In such cases, community development projects may actually contribute to conflict and do more harm than good.²⁰

1.3.3 Labour rights issues

Whereas various businesses respect the labour rights of their employees, there are many that do not. Below are some of the most prevalent labour rights issues, identified by the International Labour Organisation (ILO), that occur when labour rights are not properly taken into account by businesses:

- Child labour – according to a study carried out by the International Labour Organisation in 2017, almost 48 percent of child labour is located in Africa. An estimated 19.6 percent of children in Africa (72 million) were taking part in child labour.²¹ Most child labour occurs in farming, but it also occurs in other types of business, particularly in the informal economy (see below).
- Forced labour – forced labour refers to situations in which persons are forced to work. This can be through the use of threats and violence. It can be through requiring workers to do work to pay off debts that they cannot pay back ('debt-bondage'). In the case of migrant workers, it can also be through keeping their identity papers or threatening them with reporting them to the immigration authorities. According to the Institute for Human Rights and Business, migrant workers, indigenous peoples, women and children are most likely to be subjected to forced labour.²²
- Poor health and safety conditions – many workers die or suffer health problems from accidents they have while working or from work-related diseases.
- Labour migration – businesses, including international businesses, increasingly rely on migrant workers. Migrant workers are often exploited as their rights may not be recognised as much in national law as those of domestic workers or they may not be able to claim their rights because of cultural and/or language barriers.

- Insufficient wages – businesses do not always pay adequate wages or they fail to pay the wages they owe their workers.
- Lack of job security – some businesses subject workers to having their employment suddenly cancelled without sufficient notice or compensation.
- Excessive working time – workers may be required to work too many hours and are not provided adequate time to rest and adequate holidays.
- Collective bargaining, labour relations and freedom of association may not be respected – often workers' rights to form a trade union are not recognised properly in law and/or practice.
- Informal economy – The informal economy refers to jobs that are partly or fully outside of government regulation, taxation and inspection. Jobs within the informal economy often have poor employment conditions. The informal economy offers jobs that many individuals depend on, but it has also been associated with poverty.



ARTISANAL MINING: AN EXAMPLE OF THE INFORMAL ECONOMY

Artisanal mining has serious human rights concerns connected to it. Often artisanal miners use dangerous chemicals to remove minerals from soil (such as mercury and cyanide) because they are cheaper. This can damage the health of the miners. Often these chemicals end up in rivers which makes the water more dangerous to drink and can kill wildlife and livestock, as well as damage the environment. Labour standards are also often breached, with high levels of child labour and dangerous working conditions common in artisanal mining. One key problem with regulating artisanal mining is that it is rarely registered and divided into many small operations. Activities such as this are part of the informal economy.

International businesses can have a significant impact on the labour standards of smaller businesses in their supply chains. Even when they do not commit labour standards violations themselves, by choosing the cheapest products, they may encourage other businesses to commit labour rights violations. Local businesses which employ lower standards may find it easier to attract international businesses to buy from them as they sell goods cheaper. Governments may be encouraged to not enforce labour standards if they think less businesses will buy products in their countries if they have robust labour standards.

DID YOU KNOW

The International Labour Organisation estimated that there were 3.4 million instances of forced labour in Africa in 2016.²³



INTERNATIONAL LABOUR ORGANISATION (ILO)

The International Labour Organisation is an agency of the United Nations. It establishes labour standards, in the form of Conventions and Recommendations dealing with employment and work. Since 1998 its aim has been to get as many countries as possible to ratify what it regards as the “fundamental conventions”. There are eight fundamental conventions:

- Forced Labour, No. 29 of 1930;
- Freedom of Association and the Protection of Rights to Organise, No. 87 of 1948;
- Right to Organise and Collective Bargaining, No. 98 of 1949;
- Equal Remuneration, No. 100 of 1951;
- Abolition of Forced Labour, No. 105 of 1957;
- Discrimination (Employment and Occupation), No. 111 of 1958;
- Minimum Age, No. 138 of 1973; and
- Worst Forms of Child Labour, No. 182 of 1999.²⁴



- Amnesty International Netherlands, ‘Haki Zetu, ESC Rights in Practice: The Right to Work and Livelihoods’ (2014). www.amnesty.nl

1.3.4 Damage to the environment

Natural resources are potentially a great source of wealth for a country. The mining of minerals, the drilling of oil and similar projects can help countries with their economic development. Taxes and other income that countries make from natural resources can be spent on better public services such as education and healthcare. However, investment by international businesses in natural resources can also result in the pollution of air, water and land.

Environmental damage is especially likely where businesses do not take adequate steps to prevent it. Pollution can result from dangerous activities such as gas flaring, oil spills and improper disposal of dangerous waste products, such as dangerous chemicals. An example would be an oil business which spills oil onto nearby land and into nearby streams and rivers. Other forms of environmental damage include the degradation or destruction of land which result from large scale business projects and climate change which results from the carbon emissions of businesses worldwide. Pollution and other forms of environmental damage can also have serious impacts on human rights.



- Amnesty International, 'What has climate change got to do with human rights' [blog] (1 December 2015). www.amnesty.org



EXAMPLES OF THE EFFECTS OF ENVIRONMENTAL DAMAGE ON HUMAN RIGHTS

Amnesty International has carried out various reports on the effects of oil spills from many oil businesses in the Niger Delta. The main human rights impacts documented by Amnesty were the following:

- Violation of the rights to an adequate standard of living including the right to food – oil pollution damaged areas used to farm and fish, which are the main sources of food for many people in the Niger Delta.
- Violations of the right to maintain a living through work – the destruction of areas used to farm and fish also resulted in a loss of the main sources of livelihood for many people in the Niger Delta.
- Violations of the right to water – the oil spills polluted water used for drinking and other purposes.
- Violations of the right to health – the oil pollution affected people's health.
- Violation of the right to an effective remedy – the failure to clean up the oil spills and provide reparations.²⁵

1.3.5 Displacement of communities/land rights

Sometimes businesses will displace entire communities. Displacement occurs when communities and individuals are forced to leave their homes. It can occur in relation to business projects such as the construction of dams, irrigation projects, mines, oil rigs, road and railway developments, logging projects and other construction projects. Displacement can have many negative impacts on human rights including the rights to food, housing, water, work/livelihood, property, family, cultural life and self-determination. Displacement can also result in conflict when communities are driven onto the land of other communities. Displacement can occur in two different ways:

- Physical displacement is when communities are moved away from the land they use so a business can use it (e.g. moving a community to make room for a mine).
- Economic displacement is when communities move away from their land themselves because they can no longer use it to maintain their livelihood (e.g. a fishing community leaves a stream because it becomes polluted by a business).



FORCED EVICTIONS IN THE DEMOCRATIC REPUBLIC OF THE CONGO (DRC)

The village of Kawama was located on the outskirts of Katanga's main city, Lubumbashi. It is beside the Luiswishi copper and cobalt mine and has been there since the 1950s. In 2009, many artisanal miners, known as *creuseurs*, moved to Kawama who were allegedly carrying out illegal activities on the site of the Luiswishi copper mine.

On 24 and 25 November 2009, police in the Katanga province of the DRC sent bulldozers into the village of Kawama and ordered the demolition of hundreds of homes. The people of Kawama (both *creuseurs* and permanent residents) were given almost no notice of the demolitions, and there was no legal basis for them. The amount of compensation negotiated was not paid in full. In 2014, many villagers were still without replacement homes.²⁶



- Amnesty International Netherlands, 'Haki Zetu, ESC Rights in Practice: Land and Human Rights' (2015). www.amnesty.nl

1.3.6 Businesses and Security

Businesses sometimes require security arrangements to protect their employees and assets from theft or attack. A business's security arrangements can either be fulfilled by private security businesses or the government's own forces, whether police or army. There have been many incidences where a business's security arrangements (whether government forces or private security businesses) have led to serious human rights abuses.



SECURITY FORCES INVOLVED IN SEXUAL ASSAULTS AND RAPE IN TANZANIA

African Barrick Gold, a mining business, established the North Mara mine in Tanzania. Some women stated that they were arrested at the North Mara mine site and sexually assaulted by the business's security guards and Tanzanian police. The women told the investigators that they were taken to holding cells and threatened with imprisonment if they refused to have sex with the police or guards. After several years, African Barrick Gold publicly disclosed the events and offered the women remedy packages. MiningWatch Canada criticised the remedy packages provided as inadequate.²⁷

1.3.7 Businesses and Armed Conflict

Business activities can result in armed conflict or can contribute to existing armed conflict. Businesses (including security businesses) can be complicit in armed conflict through providing help to State forces or armed groups during an existing conflict. Conflict can lead to serious human rights abuses such as torture, unlawful killings and forced labour.



A ZIMBABWEAN BUSINESS IN THE DEMOCRATIC REPUBLIC OF THE CONGO (DRC)

During the Second Congolese Wars, a UN Panel set up by the UN Security Council investigated several business-related human rights abuses. It alleged that Avient Air, a Zimbabwean business with close connections to a business in the UK, provided military supplies to the Congolese Army and helped with the organisation of bombing raids in the Eastern DRC.²⁸

1.3.8 Corruption

Corruption can have adverse impacts on human rights. For instance, when politicians or public officials decide to use public resources for their own benefit rather than investing them in services such as education and healthcare, this can lead directly to violations of the rights to health and education. Corruption often causes government officials to act in favour of the business's interests, removing their motivation and capacity to protect human rights. Once corruption is involved in, for example, granting access to a State's natural resources, businesses have effectively placed themselves outside the law. For example, when a business bribes the government for a legal license, it may also design the legal license to avoid laws on land use and access, indigenous peoples' rights or environmental protection.



CORRUPTION IN GUINEA

BSG Resources, an international mining business, wanted to get a legal license to build an iron mine in Simandou in Guinea. Global Witness, a civil society organisation, reported that BSG Resources offered the President's wife millions of US dollars in order to gain the mining concession. BSG Resources paid nothing to the government for the mining concession. It then sold half of the mining concession to another mining business, Vale, for 2.5 billion US dollars. This was twice the amount of the Guinean government's yearly budget.²⁹



TYPES OF CORRUPTION

Amnesty International identifies the following forms of corruption amongst others:

- **Bribery** – bribery is the most obvious form of corruption: a person pays money or provides a favour to another person (e.g. a government official) to do something in their favour.
- **Diversion or misuse of public resources** – where government officials allocate money in such a way as to benefit themselves or their associates. Sometimes mega projects (e.g. dams, power plants and pipelines) are designed in such a way as to secretly divert funds to a small group of people.
- **Nepotism/cronyism** – where government officials award contracts or positions to friends or family members.
- **Corporate lobbying** – Corporate lobbying is where businesses seek to influence a government's decision-making processes, with or without paying them money. In many countries, some corporate lobbying, such as the financial support of political parties, is legal. In some cases, corporate lobbying may be considered corruption, regardless of whether or not it is legal in national law. However, Amnesty International would not consider all political contributions by corporations to constitute corruption. Amnesty International looks at the impact of corporate lobbying on human rights – for example, where corporate bodies lobby against the introduction of laws or regulations that would benefit human rights – and examines the extent to which some corporate lobbying may be a form of corruption leading to human rights violations.



CORRUPTION'S RELATIONSHIP WITH HUMAN RIGHTS

The following forms of human rights violations may result from corruption, amongst others:

- **Corruption can result in discrimination and unequal treatment of individuals in terms of civil and political rights as well as social and economic rights.** This would violate the principles of equality and non-discrimination.
- **Where businesses pay bribes in order to avoid having to comply with laws or regulations that relate to human rights then the human rights these laws protect can be violated.** For example, a business paying bribes to avoid health and safety laws is likely to lead to violations of the right to health and labour rights.

- Where politicians take funding away from public services essential for the realisation of human rights, then this can lead to violations of these rights. For example, money taken away from schools and hospitals could violate the rights to education and health.
- National laws are essential for the protection and realization of human rights. Where corruption is widespread, communities may not be able to depend on national laws at all. In such cases, it is likely that there will be widespread human rights violations.
- Where courts are corrupt the most frequently violated rights are: equality before the law and the courts, the right to liberty, fair trial rights and the right to an effective remedy for violations of human rights.
- Where the police and other local officials are corrupt, there is likely to be denial of participation rights, repression of the right to peaceful protest, excessive use of force, torture and ill-treatment, violations of the right to life and violations of the right to an adequate standard of living (often as a consequence of forced evictions).
- Corruption may also undermine consultation processes with communities who will be affected by projects through such means as bribing public officials charged with overseeing the consultation process, or 'buying off' individuals who claim to represent the interests of affected communities.



- Transparency International, 'What is Corruption?' www.transparency.org/what-is-corruption

1.3.9 Access to Remedy

In order for human rights to be effective, a victim must have access to remedy for any harm that results from human rights violations. In some cases, host State courts will be unable or unwilling to provide remedy. This occurs where the courts lack the capacity to carry out fair trials due to political influence of government officials or businesses, or because the case is too complex for them to handle. It can also occur where host State courts do not want to sanction businesses because they are afraid that such sanction could threaten the economic interests of the country. It can also be the case that, even when a court orders a remedy, the business refuses to follow the judgment of the court and moves its money and other assets to another State.

DID YOU KNOW

Some court cases involving businesses in Nigeria have taken between twenty and thirty years to reach a conclusion.³⁰

Businesses may take specific action to prevent judicial processes from providing remedy. They may threaten and intimidate community members who make complaints against them. They, or government officials acting on their behalf, may influence decision-making processes behind the scenes. They may use delaying tactics during court processes by raising questions over every point of procedure during the trial. This can increase the time it takes for a case to be heard and come to a judgement.

In such situations, it may be more appropriate to pursue remedy in other States' courts, especially home State courts. Courts are generally expected to hear cases regarding the breaking of national law in their own country. Therefore, courts in other countries may not be able to look at a case regarding human rights harm which took part in another State. However, there is increasing recognition of a need for courts to take a role in hearing cases regarding business abuses of human rights abroad, particularly when there is a close relationship between the business and that State (e.g. a parent-subsidiary relationship with the parent business domiciled in the home State and the subsidiary business acting in the host State) or where the human rights harms are severe (see also 67-68).



AN INTERNATIONAL BUSINESS AVOIDING PROVIDING REMEDY

In 1984, a chemical plant in India (UCIL), which was part owned by a US international business (UCC) and the Indian government, expelled dangerous gases following a chemical leak. The effects on nearby communities were serious. At least 3,787 people died with other estimates as high as 16,000. Health problems still exist today as a result.

The Indian government launched a criminal investigation into several individuals including Warren Anderson, the Chairman of the chemical plant. Warren Anderson was arrested but was released on bail following an intervention by the US embassy. He left India two days later.

The Indian government passed a law giving itself exclusive rights to sue over the chemical leak. The Indian government sued UCC on behalf of Bhopal victims in US courts which refused to hear the case on the grounds that Indian courts were best placed to hear a case concerning the harms in India. The case was taken to the Indian courts which ordered UCC pay interim compensation which it refused to do. The Indian government agreed to out-of-court settlement with the chemical plant which was substantially less than most estimates of what was adequate in light of the scale of the damage caused. It also agreed to drop the criminal charges against individuals, including Warren Anderson.

This decision was later overturned by the Indian Supreme Court, and a renewed criminal prosecution was taken against Warren Anderson. The US refused to hand over Warren Anderson to India. Court cases in India and the US are still being pursued today, but effective remedy has still not been provided to the victims of the chemical leak.³¹

1.4 Human rights impacts on specific groups of people

The impacts businesses have can affect groups in society differently, depending on their class, ethnicity, sexual orientation, age, political views and other types of distinction. This section of the handbook will discuss the specific impacts that businesses can have on:

1. Migrants
2. Children
3. Women
4. Indigenous peoples
5. Human rights defenders

This list of different groups of people and types of impacts is not exhaustive. Further groups at risk of discrimination include young people, members of religious or caste-based minorities, disabled people, supporters of rival political parties or leadership candidates, people from rural communities or informal settlements, the unemployed/poor, factory/industrial and agricultural/domestic workers, lesbian, gay, bisexual and transgender and intersex people, partners who have married in from outside the community, sex workers, internally displaced people and refugees. The main aim of this section is to illustrate that the impacts of businesses may be more severe on already vulnerable and marginalised groups in society. This is especially the case for those groups in society that are at risk of multiple forms of discrimination, while belonging to multiple vulnerable groups at the same time, such as indigenous children, women migrants, indigenous peoples with disabilities, to name just a few examples.

1.4.1 Migrants

International businesses often invest in projects which require migrant workers. Low-skilled migrant workers are more likely to be exploited than local workers. They often have greater difficulties in claiming their rights because they may suffer from language barriers, a lack of information or less access to the courts. In some countries, laws do not provide adequate protection for migrant workers or may even discriminate against them. Government agencies may lack the resources to protect the rights of migrant workers. Corruption may also mean that government agencies work against the interests of the migrant workers. Some migrants are irregular migrants (migrants who do not have the required legal status to be in a particular country). In such cases, they may face even stronger obstacles to the realisation of their human rights.

- **Labour rights** – Labour rights violations can vary between discrimination (e.g. providing migrant workers with less pay or worse working conditions) and very serious human rights abuses including forced labour and human trafficking. Migrant workers may be required to borrow money to pay fees related to their employment, which can

trap them in systems of debt. They will then be forced to work to pay off these debts, effectively keeping them in a situation of bonded labour.

- **Conflict** – Where migrant workers move to areas with business projects, conflict can result from tensions between local communities and migrants, particularly over access to land and resources.



MIGRATION AND INTERNATIONAL HUMAN RIGHTS LAW

States are allowed to pass laws that restrict some foreign migrants from living on their territory. However, States' migration laws and policies must be compliant with their human rights obligations. Hence, a migrant should be given legal access to a country where:

- a) it is necessary for their enjoyment of their human rights or
- b) it is the most effective way of the State meeting its human rights obligations.

Any form of residence permit provided by the government should not impose conditions that deny a migrant the right to an adequate standard of living.



- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. www.ohchr.org
- ILO Convention 97 – Migration for Employment (revised), 1949. www.ilo.org
- ILO Convention 143 – Migrant Workers (Supplementary Provisions), 1975. www.ilo.org
- Institute for Human Rights and Business, 'The Dhaka Principles for Migration with Dignity' (2012). www.ihrb.org

1.4.2 Children

Children's physical, mental and emotional state can easily be affected, both positively and negatively. Because of their vulnerability, children are often impacted differently and more severely than adults. Economic, social and physical disruptions that adults may readily cope with can be defining events in a child's life. Yet, children lack a public voice. Children are unable to vote, and they are rarely given a say in how communities make decisions, even those related to issues that would especially affect them (e.g. schools and playgrounds). Children are often not included in any consultations carried out with communities before business projects are implemented. Some unique impacts are below:

- **Labour rights issues** – Child labour negatively affects a child's wellbeing and development, including potentially preventing them from going to school. The effects on children are often unseen. For example, children may be secretly employed or they may be domestic workers. If their parents' or carers' work hours are too long for them to provide their children with proper care, children may be left at home and not attend school. Most child labour occurs in farming, but it also occurs in other types of business, particularly in the informal economy (see case study on page 30).

- **Environmental damage** – Children exposed to pollutants may absorb a higher percentage of toxins than adults and are less able to expel harmful substances from their bodies; if they miss a year of school as a result of sickness, they may never return to complete their education. Where natural resources are used unsustainably, future generations will suffer the adverse consequences.
- **Displacement** – Dispossession of land is more likely to lead to permanent health impacts and trauma. A lack of nutritious food and/or water is likely to have serious impacts on a child's development.
- **Conflict** – Conflict is likely to have serious impacts on children's physical, mental and emotional well-being. Even when children are not directly involved in conflict, they can suffer serious trauma as the result of conflict happening around them.

Children who are members of groups that are discriminated against – such as ethnic minorities, girls and disabled children – are particularly likely to be overlooked.



- International Convention on the Rights of the Child. www.ohchr.org
- ILO Convention No. 182 on the prohibition and elimination of the worst forms of child labour. www.ilo.org
- ILO Convention No. 138 on the minimum age for admission to employment. www.ilo.org
- UNICEF, 'Children's Rights and Business Principles' (2012). www.childrenandbusiness.org

1.4.3 Women

Women also face particular difficulties in the realisation of their human rights due to their more vulnerable position in society. The views of women are also less likely to be properly taken into account in government policy-making.



LARGE AGRICULTURE PROJECTS AND WOMEN FARMERS

The New Alliance for Food Security and Nutrition is a shared commitment to improve agriculture and food security in Africa through investment by both States and businesses. Several African States are partners of this initiative. ActionAid criticised its approach, arguing that much of the crops produced are exported, are low in nutrition or are not food at all (cash crops). It also argued that the focus on the creation of large commercial farms ignores the important role of smallholders, which includes many women, in providing food and improving income.³²

Potential human rights abuses that are especially relevant for women include the following:

- **Labour rights issues** – Women are less likely to receive an adequate livelihood as they are often discriminated against in the workplace and they may face sexual harassment. In many male-oriented societies, women often carry out more unpaid childcare work than men and are especially in need of adequate wages and predictable, manageable hours.
- **Displacement** – On average, women control much less in way of land holdings than men. Often their holdings are smaller and of worse quality than men's. In many cases, women's access to and control of land is 'secondary' to men's, and they must hold land through their male relatives and not in their own right. When international businesses acquire land, rural women are often excluded from decisions which are made by male relatives or other community members. If compensation is provided, it is often directed towards men rather than women: women lose access to land and its benefits, including food. As a result, women can be driven into more compromising, humiliating, and risky situations, including illegal activities and younger marriages.
- **Damage to the environment** – Women can also face unique difficulties in relation to environmental damage. For instance, when waterways are polluted near mining and oil projects, it is often women who have to travel further to collect water. They are usually less well represented in any community consultations carried out on the environmental impacts of a business project.
- **Businesses and security/conflict** – Women are especially vulnerable in times of armed conflict. In addition to impacts discussed, women are regularly subjected to increased levels of harassment and sexual violence (see case study on sexual violence in Tanzania on page 43).
- **Lack of Development** – Women are especially vulnerable to the misuse of public funds. Where public services such as healthcare or childcare are not given appropriate funding, women end up carrying out larger amounts of unpaid care work, due to gender norms in society. Where education is not made free, girls are less likely to go to school.



- International Convention on the Elimination of All Forms of Discrimination Against Women. www.ohchr.org
- International Women's Rights Action Watch Asia Pacific, 'The Business of Women's Rights' (IWRAP Asia Pacific Occasional Papers Series No. 15, 2014). <https://admin.iwraw-ap.org>

1.4.4 Indigenous Peoples

Indigenous peoples often have a deeply rooted spiritual and cultural relationship to the lands, territories and resources which they traditionally occupy or use. Often they are marginalised in society, politically, socially and economically, which limits their ability to assert their rights. Indigenous peoples are among the groups most severely affected by the activities of the extractive, agro-industrial and energy sectors. Indige-

nous peoples have the right to self-determination: they have the right to freely pursue their economic, social and cultural development.

- **Labour rights issues** – Indigenous peoples are often discriminated against in the workplace or unable to get regular jobs altogether. They may also struggle to access goods and services.
- **Damage to the environment** – When land is impacted by environmental degradation, indigenous peoples often suffer additional impacts to their traditional way of life and their cultural identity. They are more likely to be excluded from, or less well represented in, consultations.
- **Displacement** – Indigenous peoples are often excluded from agreement processes. When land is taken from them, they often suffer additional impacts to their traditional way of life and their cultural identity.



OIL PIPELINE IN CAMEROON AND ITS EFFECTS ON INDIGENOUS PEOPLES

Part of the Chad-Cameroon Pipeline (see page 28) ran through the Bagyeli people's traditional homeland. Food security became a serious problem as demand for food by migrant workers raised the price of basic food and made food unaffordable for the villagers. The public health situation in the oil fields and along the pipeline route also became more serious with the in-migration of thousands of people in search of work, particularly with respect to the spread of malaria and AIDS. The establishment of a plan to deal with these issues was seriously delayed. Some remedy was eventually provided to the Bagyeli people.³³



- UN Declaration on the Rights of Indigenous Peoples. www.un.org
- Oxfam America, 'Free, Prior, and Informed Consent in Africa: An emerging standard for extractive industry projects' (2014). www.oxfamamerica.org
- Report of the UN Working Group on transnational corporations and human rights on indigenous peoples (UN Doc A/68/279). www.ohchr.org
- ILO Convention No. 169-Indigenous and Tribal Peoples Convention, 1989. www.ilo.org

Some common myths about business and human rights issues and the facts on how business and human rights actually works.

MYTHS



FACTS

Business and human rights are about more than labour standards or fair treatment of workers. Businesses are responsible for how they treat their employees, but they are also responsible for their effects on communities. Business and human rights refers to every human right, which includes (but is not limited to) labour rights. Virtually any human right can be affected by a business (see pages 71-72).

International businesses and States are often closely connected. In many countries, the State owns part of the international business. With larger projects, a business is required to get a legal license to operate from the State. Often this legal license will include terms that the businesses should obey. Sometimes businesses undertake public functions, such as when they run schools (see pages 82-85).



Businesses can have both positive impacts and negative impacts on human rights. When business is done well, human rights will be respected and businesses can contribute to the realisation of human rights. This is more likely where the State has appropriate rules, customs and institutions.

Human rights abuses endanger economic development. Where businesses are not held responsible for human rights abuses this can lead to severe environmental damage, poverty, conflict and repressive and inefficient administrations that threaten a country's future. The most efficient economies are those that ensure businesses are properly regulated.

Committing human rights abuses may result in several negative consequences for businesses. Businesses may be punished for breaking national law or the terms of their legal license, either by administrative bodies or courts. A business's reputation may suffer, in which case ethical customers may refuse to buy from them, States may be less likely to do business with them and they may struggle to access finance from certain financial institutions. If a business does not have a social license with the communities, this may also cost them profits due to community disruptions. (see pages 31-32).

Human rights defenders are people who promote and protect human rights by non-violent means. They may be journalists, lawyers, members of human rights organisations, politicians, volunteers or individuals who speak out against government repression. They may be friends or relatives of victims of human rights violations who have the courage to stand by their loved ones despite threats and intimidation. The constant vigilance and dedication of human rights defenders are often the only defence against injustice and the abuse of power. Many are at risk because of their efforts to protect the weak and hold the powerful to account.



HUMAN RIGHTS DEFENDERS

Amnesty International urges States to:

- recognise the legitimacy of human rights defenders' work;
- ensure it is possible for people to defend human rights without fear of punishment or intimidation;
- promote the UN Declaration on Human Rights Defenders;
- ensure that the criminal justice system is not used to target or harass human rights defenders;
- fully, promptly and independently investigate attacks and intimidation on human rights defenders and bring their perpetrators to justice;
- make sure that limitations to the freedoms and rights of human rights defenders are in accordance with international human rights obligations;
- refrain from bringing criminal charges against human rights defenders speaking out about human rights violations and those taking part in legitimate peaceful protests or demonstrations to defend and promote human rights;
- adopt prompt, effective and impartial measures to provide remedy to human rights defenders who have suffered an attack or are at risk of attack and provide compensation to those who have been victims of abuses due to their work; and
- review and strengthen the role that National Human Rights Institutions can play in the protection of human rights defenders.

In many cases involving conflicts between communities and businesses, human rights defenders have been harassed and persecuted. This has included arbitrary detention, threats, violence and killings, targeting by armed groups, disappearances, restrictions of the freedoms of assembly and expression and other violations of rights.

The role of businesses in relation to human rights defenders has been recognised by the UN Special Rapporteur on Human Rights Defenders. He stated that businesses should support human right movements even though businesses may be challenged by them. Businesses can legitimise human rights defenders' concerns by condemning

human rights violations. He said that many human rights defenders have learned to resolve local human rights issues by involving business leadership. Because of businesses' economic and political influence, they are in a special position to influence different figures in society to support human rights defenders.³⁴



- UN Declaration on Human Rights Defenders. www.ohchr.org
- Business, Civic Freedoms & Human Rights Defenders Portal.
www.business-humanrights.org/en/bizhrds

2)

INTERNATIONAL STANDARDS AND THE ROLE OF DIFFERENT ACTORS

The objective of this chapter is to explain how the business and human rights regime works. It looks at the different roles of actors and initiatives in relation to business and human rights issues.

The structure is:

- The Business and Human Rights Regime (section 2.1)
- Host States (section 2.2)
- Home States (section 2.3)
- Businesses (section 2.4)
- State-Business Relationships (section 2.5)
- International Organisations (section 2.6)
- Financial Institutions (section 2.7)
- International Soft Law Initiatives (section 2.8)
- National Human Rights Institutions/Ombudsmen (section 2.9)
- Multistakeholder and Industry initiatives (section 2.10)
- Civil Society Organisations (section 2.11)
- Communities (section 2.12)

2.1 The Business and Human Rights Regime

In international human rights law, the focus is always on the obligations of States to realise human rights. Most international law obligations are placed on States; it is States that ratify human rights treaties and only States can commit human rights violations. In contrast, very few international law obligations are placed directly on other actors, including businesses. Instead, traditionally the role of States is to ensure that other actors, including businesses, do not commit human rights abuses. The human rights obligations of States are divided into the obligations to respect, protect and fulfil human rights and fundamental freedoms:

- **Respect** – The obligation to respect means that the State should not interfere with peoples' enjoyment of their rights. This obligation applies to all State organs including State-owned businesses. It also requires that States are not complicit in human rights abuses committed by businesses.
- **Protect** – The obligation to protect requires that States should make sure that non-State actors, including businesses, do not interfere with peoples' enjoyment of their rights. This includes taking steps (including passing legislation, implementing policies, setting up and supporting institutions) to ensure businesses do not abuse human rights in their jurisdiction.
- **Fulfil** – The obligation to fulfil requires that States ensure that everyone has full enjoyment of their human rights. This has three elements: facilitate, promote and provide.
 - Facilitate: enabling and assisting people to enjoy their rights, e.g., ensuring that there are job opportunities so people can find work.
 - Promote: ensuring people understand their rights, e.g. ensuring everyone is aware of their labour rights.
 - Provide: ensuring that, where people cannot enjoy their human rights, then they are provided, e.g., ensuring that persons with disabilities are given assistance in finding work and provided with financial assistance.

A list of the main human rights contained in international human rights instruments is on pages 71-72.



HUMAN RIGHTS VIOLATIONS V. HUMAN RIGHTS ABUSES

- » A human rights violation is committed when a State fails to meet its human rights obligations. For instance, a State violating journalists' right to free speech by imprisoning them for publishing material harmful to the government's reputation.
- « A human rights abuse is committed when an actor who is not part of the State (i.e. not a government official) commits an act that harms another person's enjoyment of his or her human rights. For instance, a business may grab land from a community without consent and adequate compensation.

When a business has committed a human rights abuse, a State has also committed a human rights violation when either:

- a) the business's actions are also actions of the State. A business's actions are considered actions of the State when the business is an organ of the State (State-owned) and/or controlled by the State. In such situations, a human rights abuse committed by the business is likely to constitute a human rights violation by the State. This is part of a State's obligation to respect human rights; or
- b) the business is not part of the State but the State has failed to take appropriate steps to prevent, investigate, punish and redress a human rights abuse. This obligation refers to a human rights abuse committed by any non-State actor, including businesses, regardless of whether they are State-owned or not. These steps are sometimes referred to as due diligence (this should not be confused with a business's responsibility to carry out human rights due diligence discussed on pages 79-80). This is part of a State's obligation to protect human rights.

This international human rights law regime was designed after 1945, when States were the only significant international decision-makers. Today, international businesses have a lot more power which has led to governance gaps (see pages 22-23) where governments are unable or unwilling to carry out their functions properly. This has resulted in an increased movement towards recognising that businesses also have a responsibility/duty to respect human rights, not just States.

In 2011, the UN Human Rights Council unanimously endorsed the UN Guiding Principles on Business and Human Rights, following a long consultation process with governments, businesses, and civil society organisations. They are a non-binding instrument which means that they do not place new legal obligations on States or businesses. However, they represent a global standard for preventing and addressing human rights abuses linked to business activity.

They are based on three pillars:

- **State Duty to protect:** This is based on a State's existing obligation to protect under international human rights law. States must make sure that non-State actors, including businesses, do not interfere with people's enjoyment of their human rights.
- **Business Responsibility to respect:** The business responsibility to respect is based on the role of businesses as specialised organs of society performing specialised functions which are required to comply with all applicable laws and to respect human rights. This is not an international law obligation. However, it is recognised in many international instruments, resolutions and by many businesses.
- **Access to remedy:** Access to remedy is based on the need for breaches of rights and obligations to be matched with appropriate remedy. The UN Guiding Principles mention various actors, including States and businesses, which can be involved in the provision of remedy.



THE UN GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS

The UN Guiding Principles on Business and Human Rights represents a clear international consensus that businesses should – at a minimum – respect all human rights. While these Guiding Principles represent a significant step forward towards recognising the role businesses should play with respect to human rights, Amnesty International has had the following criticisms, amongst others:

- What actions a State must take under its duty to protect is not clearly specified. The Guiding Principles should make clear that States should adopt and implement effective regulatory measures to prevent, put an end to and punish business abuses of human rights in their own country and in other countries, and to ensure the provision of effective remedies, including through engaging in international co-operation and assistance. This should include State's requiring businesses to carry out human rights due diligence under the law with independent monitoring systems to ensure this.
- The Guiding Principles provide insufficient guidance as to what home States are required to do to prevent their businesses committing human rights abuses abroad, including in trade and investment treaties/contracts.
- The business responsibility to respect provides insufficient guidance as to what is required from businesses and proper engagement with local communities should have been made central to due diligence.
- More guidance should have been provided on protecting the rights of women, children, indigenous peoples and human rights defenders.
- The Guiding Principles focus on non-judicial grievance mechanisms including voluntary mechanisms as a means to provide remedy. The UN Guiding Principles place emphasis on non-judicial grievance mechanisms (including voluntary mechanisms as a means to provide remedy). Courts and effective, legally binding remedies consistent with international human rights law should be placed at the core of providing effective remedy.

Increasingly, a whole variety of different actors are involved in business and human rights issues: home States, host States, businesses, international organisations, International Financial Institutions, National Human Rights Institutions, multistakeholder initiatives and industry initiatives. The roles of these different actors are discussed in the next sections.



- UN Guiding Principles on Business and Human Rights. www.ohchr.org

2.2 Host States

The host State is the State in whose territory the business is carrying out activities. Each State is primarily responsible for ensuring the realisation of human rights on their own territory. Where we discuss the State in relation to businesses not owned or controlled by the State, the main human rights obligation we refer to is the State obligation to protect. Principle 1 of the UN Guiding Principles states that States must take adequate steps to prevent, investigate, punish and redress human rights abuses within their territory:

- **Prevent:** preventing a human rights abuse means to stop a business committing a human rights abuse before it happens. For instance having health and safety requirements which prevent workplace accidents occurring in the first place.
- **Investigate:** investigating a human rights abuse requires making sure that allegations of criminal or other wrongful activity are examined by competent authorities.
- **Punish:** punishing requires that businesses are appropriately punished where they are engaged in human rights abuses. This can include fines, payment of compensation to victims and criminal prosecutions. Punishments should be of sufficient gravity as warranted by the human rights abuse and should be sufficient to deter future human rights abuses.
- **Redress:** remedy should be provided to victims of human rights abuses. This includes apologies, restitution, rehabilitation, financial or non-financial compensation and punitive sanctions and the prevention of future harm.

States are free to choose which specific measures they take when carrying out their obligation to protect. The UN Guiding Principles on Business and Human Rights recommend that a State considers adopting a range of measures including policies, law, regulations and adjudication. The main human rights treaties require States to take legislative, administrative and judicial measures.

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LEGISLATIVE, ADMINISTRATIVE AND JUDICIAL MEASURES

- **Legislative measures** refers to passing laws. For instance, governments can adopt anti-discrimination laws or require consultations with communities before large business projects start.
- **Administrative measures** refers to action taken by government agencies. For instance, governments can set up regulatory bodies to investigate businesses' compliance with national law.
- **Judicial measures** requires States to have competent, independent and impartial courts to ensure that people are treated equally before the law and can claim effective remedy for wrongdoing.

In 2014, the UN Human Rights Council called on all Member States to develop National Action Plans (NAPs) to promote the implementation of the UN Guiding Principles on Business and Human Rights. Since 2011, and due in part to these initiatives, a number of individual States have developed and published National Action Plans on business and human rights, and more are currently in the process of doing so.

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NATIONAL ACTION PLANS ON BUSINESS AND HUMAN RIGHTS

National Action Plans on Business and Human Rights, and the process to develop them, can:

- ensure government public policy supports the realisation human rights with respect to business;
- have an inclusive process to identify national priorities and concrete policy measures and action;
- be transparent and predictable;
- have a process of continuous monitoring and evaluation of implementation;
- have a platform for ongoing dialogue between government officials, businesses, communities, NGOs and other interested actors; and
- have a flexible yet common format that encourages international co-operation and exchanges of good practices and lessons learned between different actors.³⁵

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NATIONAL ACTION PLANS ON BUSINESS AND HUMAN RIGHTS

While a very small number of countries have produced National Action Plans on Business and Human Rights, these plans have not sufficiently committed to adopting laws which are necessary to prevent human rights abuses by businesses. According to Amnesty International, National Action Plans should therefore:

- identify gaps in laws, policies and practice that aim to prevent human rights abuses by businesses and aim to hold those businesses accountable;
- be developed with the participation of civil society and communities;
- identify priorities, define specific actions and timelines, allocate responsibilities between government bodies and ensure policy coherence; and
- establish a mechanism to monitor their implementation and assess their effectiveness.³⁶



- Danish Institute for Human Rights and the International Corporate Accountability Roundtable, 'National Action Plans on Business and Human Rights' (June 2014). <https://static1.squarespace.com>

As discussed on pages 19-22, there are several issues that contribute to host States' ability to implement their human rights obligations. One of these is investment treaties/contracts. Investment treaties/contracts are designed to make sure that the time, money and technology that a business invests in setting up a business project are not wrongfully taken by the host State, and that the host State cannot insist on burdensome fees and regulations that a business would not be aware of before investing in the country. Investment treaties allow businesses to take governments which place certain measures on them that will lower their profits (stabilisation clauses) to court. Governments often sign investment treaties that restrict their abilities not only to place onerous burdens on international businesses but also to place regulation on businesses that protect people's human rights or the environment. Where a State signs an investment treaty/contract which prevents it from meeting its human rights obligations, this does not mean that the State is no longer bound by human rights law.

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INVESTMENT TREATIES

The UN Guiding Principles on Business and Human Rights require that States do not sign investment treaties which have provisions that prevent them from fulfilling their human rights obligations (Guiding Principle 9). The UN Special Representative on Business and Human Rights developed ten criteria for negotiating investment treaties:

1. **Preparation and planning:** The State should research what effects an investment treaty may have on human rights before treaty negotiations start.
2. **Human rights responsibilities:** The investment treaty should include human rights responsibilities to prevent human rights abuses.
3. **Project operating standards:** The investment treaty should include standards, such as laws and regulations, which prevent, investigate, punish and redress human rights abuses.
4. **Stabilisation clauses:** Stabilisation clauses must not interfere with States' human rights obligations.
5. **Additional goods or service provisions (clauses that an investor will provide additional services beyond the scope of the project):** The investment treaty must ensure that these services must be carried out in a way that is compatible with human rights.
6. **Physical security for the project:** Any provisions regarding security should ensure that security arrangements do not abuse human rights.
7. **Community engagement:** The investment treaty should ensure that effective community consultations are carried out before and during the business project.
8. **Monitoring and compliance:** The investment treaty must ensure the State has the power to monitor the project's compliance with relevant standards to protect human rights.
9. **Grievance mechanisms:** Communities should have access to an effective non-judicial grievance mechanism for remedy for any human rights abuses caused by the project.
10. **Transparency:** The investment treaty should be publicly available.³⁶

2.3 Home States

International businesses which commit human rights abuses in host States are often based in other States: home States. Host States' governments may fail to take adequate steps to implement their obligation to protect because they are unable or unwilling. There is growing recognition of extraterritorial human rights obligations for home States to exercise their obligation to protect over their businesses when they commit human rights abuses in host States. Guiding Principle 2 provides examples of measures home States have taken to prevent human rights abuses abroad: reforming corporate law, reporting requirements, multilateral soft law initiatives, responsible investment and extraterritorial jurisdiction.

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EXTRATERRITORIALITY OF HUMAN RIGHTS OBLIGATIONS V. EXTRATERRITORIAL JURISDICTION OVER HUMAN RIGHTS ABUSES

The word extraterritorial refers to issues outside a State's territory. In this case, jurisdiction refers to when a court can pass a judgement over a particular issue.

- » Extraterritorial human rights obligations are the obligations of States to take actions contributing to the realisation of human rights outside of their own territory. Various States and businesses have argued that the obligation to protect is limited to a State's territory. Under this understanding only host States have human rights obligations towards international businesses. However, there is a growing body of legal opinion that States have human rights obligations outside of their territory. Therefore, home States would also have human rights obligations. Amnesty International's perspective on extraterritorial human rights obligations is highlighted below.
- « Extraterritorial jurisdiction refers to when a State's courts make judgements over events that occurred outside of that State's territory, for instance a Canadian court allowing Togolese communities to sue a Canadian business for human rights abuses that occurred in Togo. The exercise of extraterritorial jurisdiction is governed by international rules that prevent unreasonable interferences in another State's affairs, but States are permitted to exercise extraterritorial jurisdiction in some cases (e.g. where international crimes have been committed). There are some examples of home States exercising jurisdiction over serious human rights abuses in host States (see page 125 for an example). The differing positions of whether and when a home State is required to exercise extraterritorial jurisdiction is discussed on pages 67-68.

Corporate Law

Traditionally, businesses have been understood to exist primarily to make a profit. The majority of corporate laws are thus drafted with the objective that a business makes the largest profit possible. Management is required to ensure that the decisions it makes are in the best interests of the business. One key conclusion that

the UN Special Representative on Business and Human Rights made was that, in some States, the management staff of businesses risk disobeying corporate law if they respect human rights. This is because spending money on human rights due diligence processes may be seen as acting to decrease a business's profits, at least in the short term.

The UN Guiding Principles on Business and Human Rights require States to reform their corporate laws from looking only at profit towards allowing, and requiring, businesses to respect human rights, even if this increases a business's financial risk or decreases their profits. The Guiding Principles also suggest States pass laws that require corporate bodies, including corporate boards, to engage with communities affected by their decisions (Guiding Principle 3).

Reporting requirements

States can require that businesses publicly report on human rights issues when they carry out business abroad. This encourages businesses to not commit human rights abuse by increasing transparency and increasing the possibility of reputational harm when they commit human rights abuses. Examples are the United States Dodd Frank Act which requires US businesses to report on what actions they have taken to eliminate conflict minerals from their supply chains in connection with the Democratic Republic of the Congo and the United Kingdom's Modern Slavery Act 2015 which requires UK businesses to report on, and make public, steps they have taken to eliminate slave labour from their supply chains.



HUMAN RIGHTS REPORTING REQUIREMENTS

The objective of reporting on environmental, social and human rights risks and impacts is to ensure that communities know of the actual and potential impacts of a business's activities, as well as the measures taken to prevent and mitigate any impacts of a business's activities. Reporting should include specific information on:

- the human rights and environmental risks businesses have identified in connection with their operations and how these risks were addressed (including the methodology of the impact assessment, the actions taken to prevent or mitigate impacts and processes in place to monitor whether these actions were successful);
- all significant incidents that occurred during the reporting period, i.e. actual incidents of where their operations caused or contributed to human rights abuses or environmental damage. Reporting on incidents should include sufficient information to enable independent verification (time and location of incident, details of the incident, etc.); and
- supply chains and other business relationships.

Requirements for non-financial reporting should ensure that States take appropriate steps to enforce reporting rules allowing communities to (a) take legal action against failure of a business to disclose nonfinancial information and/or (b) bring a failure to adequately disclose information before an administrative authority competent either to decide on complaints or to initiate a lawsuit.³⁷

Multilateral soft law initiatives

Multilateral soft law initiatives are agreements which States make with each other which are not treaties but are still authoritative standards because they are endorsed by States. An example is the Guidelines for Multinational Enterprises of the Organisation for Economic Co-operation and Development (OECD) which are recommendations for responsible business conduct for international businesses operating in or from OECD States, or adhering countries (see page 96).

Responsible Investment

Many organisations that provide investment for businesses, whether set up by multiple States, one State or privately run, require businesses they invest in to respect investment standards which may include human rights standards or concerns, at least in some instances. States should ensure that their financial institutions have and enforce human rights standards.

Exercise of extraterritorial jurisdiction

Extraterritorial jurisdiction is when the courts of a home State rule on human rights abuses committed in a host State. Jurisdiction is based on international law, but there is a lot of debate about what the exact rules in the international law of jurisdiction are. The most accepted type of State jurisdiction is territorial jurisdiction. Territorial jurisdiction allows States to listen to court cases that are about actions that occur on their territory. For instance, if a robbery occurs in Mali, Malian courts should try the robber, rather than courts in, for example, Egypt.

When States' courts exercise jurisdiction over events that take place in other States, they cannot interfere with that State's internal affairs without an adequate reason. However, there are a number of circumstances in which a State can exercise extraterritorial jurisdiction. One example is where they are the home State of the business, but there are others. In such circumstances, States *may* exercise extraterritorial jurisdiction; this does not mean they *must* exercise jurisdiction. There is a lot of debate about whether and when human rights law requires States to exercise extraterritorial jurisdiction over human rights abuses that occur in other States. On the next page are two perspectives: that taken in the UN Guiding Principles on Business and Human Rights and Amnesty International's perspective.



EXTRATERRITORIAL JURISDICTION

States have the obligation to ensure that remedy is provided for human rights abuses that occur in other States, where these abuses were reasonably foreseeable and the State has the legal capacity to act to prevent the abuse. This is based on States' obligations to protect human rights abroad (see page 65). States also have the obligation to aid other States with investigations into human rights abuses and making sure adequate remedies are provided. This is partly based on the obligation of international co-operation and assistance.

The commentary to Principle 2 of the UN Guiding Principles on Business and Human Rights states the following on State's duty to exercise extraterritorial jurisdiction over businesses which are involved in human rights abuses abroad:

'At present States are not generally required under international human rights law to regulate the extraterritorial activities of businesses domiciled in their territory and/or jurisdiction. Nor are they generally prohibited from doing so, provided there is a recognised jurisdictional basis.'

Amnesty International is critical of the approach of the Guiding Principles towards extraterritorial jurisdiction. The approach of the Guiding Principles understates the actual scope and range of State obligations under international human rights law. This has the potential to obscure the fundamental objective of protecting human rights.

The Guiding Principles present a view of international human rights law that does not reflect interpretations of international law by treaty bodies. In particular, the statements above are inconsistent with the General Comments of international human rights treaty bodies, which have clarified the obligation of States to protect the human rights of people based outside their territories and jurisdiction.



UN TREATY BODY ON THE UK'S HUMAN RIGHTS OBLIGATIONS

The UN Committee on Economic, Social and Cultural Rights regularly reviews State Parties' reports on their human rights performance under the International Covenant on Economic, Social and Cultural Rights (ICESCR). In reviewing the UK's National Action Plan on Business and Human Rights, it expressed concerns about the lack of any regulations to ensure that UK businesses respect human rights abroad.

It recommended that the United Kingdom adopt appropriate legislative and administrative measures to ensure that UK businesses are held liable in the UK for violations of economic, social and cultural rights in their projects abroad.³⁸

2.4 Businesses

There are very few international obligations that apply directly to businesses. However, there is a clear international consensus that businesses should – at a minimum – respect all human rights. This responsibility to respect was expressly recognised by the UN Human Rights Council on 16 June 2011 when it endorsed the UN Guiding Principles on Business and Human Rights. On 25 May 2011, the 42 governments that had then adhered to the Declaration on International Investment and Multinational Enterprises of the Organisation for Economic Co-operation and Development (OECD) unanimously endorsed the principle that businesses should respect all internationally recognized human rights wherever they operate.

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HUMAN RIGHTS ABUSE V. ADVERSE HUMAN RIGHTS IMPACT

- » A human rights abuse is committed when an actor who is not part of the State (e.g. not a government official) commits an act that harms another person's enjoyment of his or her human rights. For instance, where a business takes possession of land from a community without consent or adequate compensation.
- « An adverse human rights impact occurs when an action removes or reduces the ability of an individual to enjoy his or her human rights.
In the UN Guiding Principles on Business and Human Rights, the term 'adverse human rights impact' is used, whereas international human rights bodies tend to refer to the term 'human rights abuse'.

Unlike the State's duty to protect, a business's responsibility to respect human rights is not based on international human rights treaties. Rather it is grounded in:

- **societal expectations:** the expectations of society including communities, customers and investors (see reputation and social license on pages 29-31).
- **official recognition:** the UN Guiding Principles on Business and Human Rights which were endorsed by the UN Human Rights Council, the UN General Assembly and many other actors including some of the following: businesses, business associations, investors, trade unions and civil society organisations around the world.
- **incorporation into other international instruments:** the responsibility to respect has been incorporated into many other international instruments including: the OECD Guidelines for Multinational Enterprises and the International Organization for Standardization's ISO 26000 standard.

The business responsibility to respect exists independently of a State's duty to protect human rights. Businesses are expected to respect human rights regardless of how well a State carries out its human rights obligations. Vice versa, States are expected to carry out their human rights obligations regardless of how well a business carries out its responsibility to respect human rights. That means, if a business commits a human rights abuse which goes uninvestigated and unpunished by the State, both the State and the business have failed in their human rights obligations/responsibilities, and neither can blame the other for their failure. Whilst States have obligations to respect, protect and fulfil, businesses are only required to respect (to do no harm and to prevent and remedy any adverse human rights impacts).

2.4.1 Rights a business must respect

The UN Special Representative on Business and Human Rights identified that the key rights that businesses should respect are those in the International Bill of Rights (which constitutes the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR)), as well as the International Labour Organisation's Declaration on Fundamental Principles and Rights at Work and its eight fundamental Conventions.

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RIGHTS IN THE INTERNATIONAL LABOUR ORGANISATION'S FUNDAMENTAL PRINCIPLES AND RIGHTS AT WORK

- The elimination of all forced or compulsory labour.
- The freedom to association (including the right to set up and join a trade union).
- The freedom for voluntary negotiation between businesses and trade unions, including making agreements to ensure fair employment.
- Equal pay between men and women for work of equal value.
- The freedom from discrimination.
- No children attending compulsory education will be forced to work.
- No children under fifteen should work.
- No children under eighteen should work in industries that are unsafe or immoral for under-eighteen year olds, including the very worst forms of child labour: child slavery, child soldiers, child prostitution, child pornography, drug trafficking and some other industries.

On the next pages is a list of the rights in the International Bill of Rights with examples of how a business can adversely impact them:



- International Labour Organisation Fundamental Conventions. www.ilo.org

HUMAN RIGHT	EXAMPLES OF ACTIONS that a business may take which adversely impact that right
Right to life	A business may benefit from or co-operate with State or private security forces who use excessive force against communities. A business may buy resources from or sell weapons to armed groups
Right to education	A business may employ children hence preventing them from accessing education. Where a school is privatised (run by a business), it may charge unaffordable fees.
Right to housing	A business may carry out forced evictions. Government agents may carry out forced evictions to make space for business projects. Pollution caused by businesses may result in communities being forced from their houses.
Right to food	A business may evict people from their land unlawfully without compensation, thus limiting their access to food. A business may cause pollution which harms community members' crops and/or livestock.
Non-discrimination	A business may discriminate against people of different ethnicities, women, indigenous peoples, migrants, people of different religions and/or others in their hiring practices or how much they pay them.
Right to remedy	A business may take action to hide their human rights abuses from the police and regulatory bodies in order to avoid having to pay compensation. A business may unfairly influence the functioning of courts and government officials.
Right to liberty	A business may benefit where police or military officers illegally detain community members and human rights defenders protesting against a business's activities. A business may detain members of a local community unlawfully.
Right to a fair trial	A business can corrupt judicial processes through paying bribes. A business may prevent access to relevant evidence.
Abolition of slavery	A business may keep workers in situations of forced labour. A business may buy from other businesses which employ people in forced labour.
Right to movement across borders	A business may confiscate migrants' papers so they are forced into situations of bound labour. A business may buy from a supplier who forces migrants into bound labour.
Right to asylum	A business may force an asylum seeker into bound labour through threatening to send them to their home country. A business may buy from a supplier who forces asylum seekers into bound labour.
Right to freedom of conscience and religion	A business may discriminate against employees of different religions. A business may not respect rights of workers to practice their religion (e.g. time off for holy days or prayer times).
Right to social security	A business may not pay contributions required under national legislation or employee contracts.

HUMAN RIGHT**EXAMPLES OF ACTIONS**

that a business may take which adversely impact that right

Right to family life

A business requires excessively long hours. Their employees may not be able to properly engage in family life.

Right to freedom of expression

A businesses may prevent, or benefit from, the prevention of peaceful protests against a business project.
A media business (e.g. a business which publishes newspapers) may distribute hate speech or government propaganda, or it may censor certain information.

Right to work

A business may not provide just and favourable conditions of work.
A business may pay wages below the cost of living and/or below minimum wage laws.

Right to democratic participation

A media businesses must ensure it is not unduly influenced by the government.
A business may not provide workers time off to vote.

Abolition of torture and cruel, inhuman or degrading treatment

A business may provide equipment to government officials who use it to carry out torture.
A business may sexually assault or rape employees or nearby community members which would constitute cruel, inhuman or degrading treatment.

Right to share in scientific benefits

A business may own the rights to necessary medicines such as AIDS medication and prevent community members accessing this medication at a fair price.

Right to health

A business may provide inadequate health and safety conditions for workers.
A business project may impact communities' health through pollution.

Right to self-determination

A business may take land from an indigenous people without their free, prior and informed consent.

Right to not be punished outside of the law

A business may influence government officials to punish people outside of the law. Government officials may unlawfully arrest people which oppose a business's activities on the business's behalf.

Right to privacy

A business could hand over private data to other businesses without permission.
A business may help identify individuals that the government intends to persecute.

Right to water

A business may overuse water supplies so there are limited water supplies for communities. A business may redirect water from communities by building dams.

Right to culture and arts

A business may take land of cultural value, for instance building a business project on burial grounds of significance to the local community.

Right to freedom of association

A business can prevent peaceful protests against their operations, either by hiring security forces or by having a relationship with the police.
A business may refuse to recognise or negotiate with trade unions.



- The International Bill of Rights Factsheet No. 2. www.ohchr.org
- Universal Declaration of Human Rights. www.un.org
- UN International Covenant on Civil and Political Rights. www.ohchr.org
- UN International Covenant on Economic, Social and Cultural Rights. www.ohchr.org

2.4.2 The scope of a business's responsibility to respect

When assessing whether a business has committed a wrong in national law, we mostly look at whether a business has caused the wrong. For instance, if we need to find out who is responsible for an oil spill, we look at which actors took actions which caused the oil spill. This is an obvious way of determining wrongdoing and is included in nearly all definitions of crimes and civil wrongs including murder, bribes, assault etc. However, sometimes businesses may bear responsibility for adverse human rights impacts even though their actions did not directly cause the impacts. For example, international businesses can impact labour rights just by buying the cheapest products (page 38).

For instance, imagine an international business which buys products from factories to sell to customers. It will probably decide to sell most of the more expensive products in richer countries because customers in rich countries can afford to buy them. It will probably also decide to buy the products from factories in poorer countries because people in poorer countries may work for lower wages and in worse conditions. If the factories in the poorer countries raise their labour standards then the price of the product may go up, and the international business may decide to start buying from a different country because products made there are cheaper. Hence, if the business always buys the product at the lowest price, it is likely to buy products from factories that cause human rights abuses and to not buy from factories which adopt better labour standards. It should be noted that there are businesses which do pay more than the cheapest price to ensure they are not contributing to adverse human rights impacts.

There is a growing realisation that, in a world with so many connections between businesses, we should not only look at which business *directly causes* an adverse human rights impact, but we should also look at which businesses are *directly linked* to an adverse human rights impact (e.g. they bought from the supplier who caused the adverse human rights impact).

There are three basic ways in which a business can be involved in an adverse impact on human rights:

- a) It may cause the impact through its own actions.
- b) It may contribute to the impact through the actions of a third party – either directly or indirectly.
- c) It may be directly linked to an impact through having a business relationship with the entity that caused the impact.

In the case where a business could cause or contribute to an adverse human rights impact, it has the responsibility to identify, prevent, mitigate, account for and remedy any adverse human rights impact. In the case where a business is directly linked to an adverse human rights impact, it has the responsibility to identify, prevent,

mitigate and account for any adverse human rights impact. It is not necessarily required to remedy an adverse human rights impact it has not caused or contributed to, although it can decide to do so in the interests of complying with national law or protecting its reputation. There is much debate internationally as to when a business is causing, contributing, or directly linked.

Examples of situations where a business likely *causes* adverse human rights impacts



- A factory or other business discriminates against women, paying them less than men.
- A mining business pollutes a nearby stream affecting the drinking water of a nearby community.
- A logging business takes land from communities without consultation or adequate compensation.

Examples of situations where a business likely *contributes to* adverse human rights impacts



- A construction business building detention camps for a government who violates prisoners' human rights.
- An internet provider giving private information to a government who uses that information to target and arrest human rights defenders and protesters.
- A retail business who gives a supplier a difficult demand at the last minute, pushing the supplier to breach labour rights in order to provide the required service.

Where a business has caused the adverse human rights impacts, it must remedy them and take actions to prevent and mitigate any potential adverse human rights impacts in the future. Where a business contributes to an adverse human rights impact committed by another actor (e.g. a State, a business or a supplier), it must end its contribution, provide remedy for its contribution and take measures to ensure that it does not contribute to any potential adverse human rights impacts in the future. If it is still linked to the third party by a business relationship then it must also take actions to exercise influence over the third party to not commit further adverse human rights impacts and, if this fails, terminate its relationship (Guiding Principle 19).

Where a business is directly linked to another actor (e.g. a State, a business or a supplier) which is causing adverse human rights impact by a business relationship, it should exercise leverage over the third party to stop the adverse human rights impact(s). Leverage is a term used to describe the influence a business has over another actor.

Examples of a business which is likely *directly linked to an adverse human rights impact*

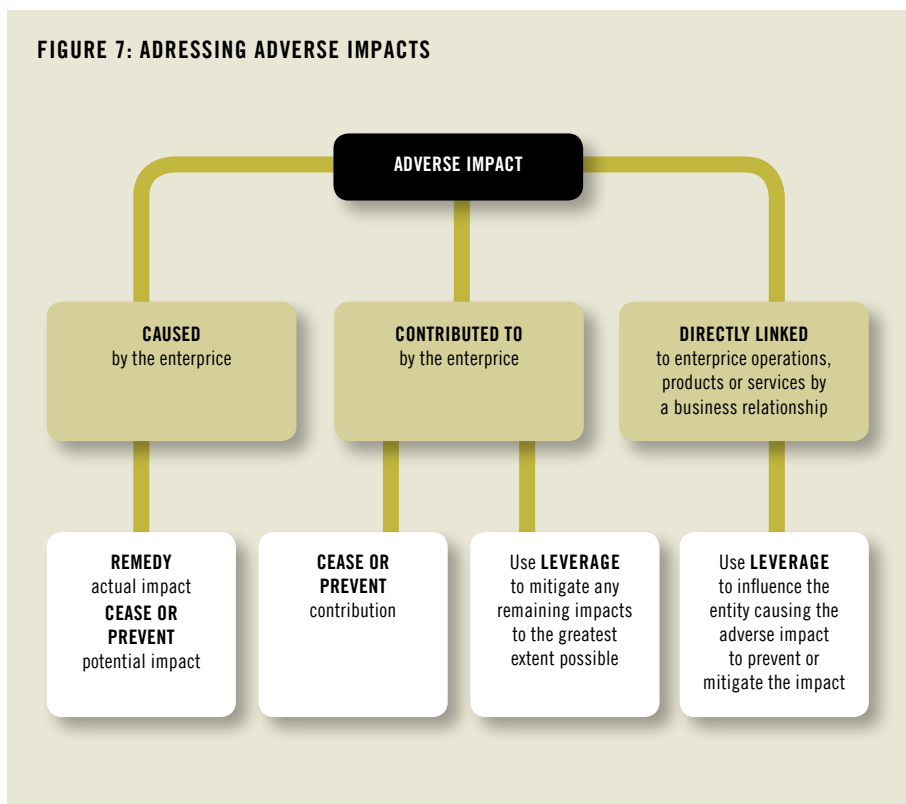


- An International Financial Institution provides a loan to fund a mining business. It has appropriate investment safeguards in place but then communities are still relocated without consultation or compensation.
- A shopping business makes a contract with a supplier which includes labour and other human rights standards. The supplier breaches labour standards despite this.
- An International Financial Institution provides a loan to a State to spend on development projects and then the State spends the money on its military which then violates the human rights of its citizens.

Forms of leverage are:

1. the control a business has over the other actor (e.g. it owns part of the business or it directs a business project that the business is part of);
2. the terms of contract between the enterprise and the entity (e.g. human rights requirements in a contract with a supplier);
3. the importance of the business relationship for the other actor (e.g. if a retail business buys a lot of products made by a factory then the factory will be keen to make sure the retail business continues to do further business with them);
4. incentives a business can provide the actor with (e.g. the promise of future business, recommending the actor to other businesses, providing trainings to help the actor's employees understand the importance of respecting human rights);
5. the effects on the entity's reputation if the business relationship is ended (e.g. a State's reputation could be damaged worldwide if a bank refuses to give it a loan on human rights grounds);
6. if the business requires that the actor to be a member of a multistakeholder initiative which requires respect for human rights and can communicate any adverse human rights impacts to this initiative; and
7. if the business can inform the government of the adverse human rights impacts and inform them to take action against the actor.³⁹

FIGURE 7: ADDRESSING ADVERSE IMPACTS



If the business exercises its leverage and the other actor continues to commit adverse human rights impacts then it should ordinarily terminate its relationship with the business. In deciding whether to terminate its relationship with the business, it should take account of any potential adverse human rights impacts that would result from doing so. If the business relationship is crucial to the business (e.g. the business could not survive without it) then it may have to permit some adverse human rights impacts by the other actor, but it should terminate the relationship if the adverse impacts are severe enough and when its reputation or the law requires it to do so. The criteria for if/when a business is required to terminate a relationship when it is directly linked are often contested in international debate. If the business has contributed to the impact it must take any action to end its contribution regardless of how crucial the relationship is and provide remedy for actual adverse human rights impacts that resulted from its contribution.

2.4.3 What steps a business must take to fulfil its responsibility to respect

The responsibility of business enterprises to respect human rights applies to all businesses from international businesses to small business vendors. All businesses must meet the same standard of respecting human rights. However, businesses which are more likely to commit potential adverse human rights impacts because of their size (international businesses) or what they do (security firms) will have to have stronger processes in place to meet their responsibility to respect. In order to meet their responsibility to respect human rights, businesses must have:

- I. A human rights policy.**
- II. A human rights due diligence process** which identifies, prevents, mitigates and accounts for adverse human rights impacts:
 - a) Identify: identifying adverse human rights impacts requires a business to research the potential adverse human rights impacts of its business activities.
 - b) Prevent: prevention of adverse human rights impacts requires businesses to prevent an adverse human rights impact from happening.
 - c) Mitigate: for those impacts that cannot be prevented, a business must take action to reduce the adverse human rights impact as far as possible with any remaining impact requiring remedy.
 - d) Account for: a business must publish all of its efforts in identifying, preventing, mitigating and remedying adverse human rights impacts and communicate this to the community. This is called 'knowing and showing'.
- III. Processes to provide remedy** for any adverse human rights impacts they cause or contribute to.

I. **A Human Rights Policy**

In order to carry out their responsibility to respect it is essential that businesses adopt a human rights policy. A human rights policy:

1. demonstrates to the business's staff and everyone else that respecting human rights is the minimum standard of business;
2. communicates the expectation of top management as to how all of the business's staff, as well as business partners, should behave in order to respect human rights;
3. helps develop internal procedures which are necessary to carry out the responsibility to respect in practice.

Business enterprises should express their commitment to meet this responsibility through a statement of policy that:

- a) is approved at the most senior level of management of the business;
- b) is informed by the expertise of the business itself and/or external parties such as communities;
- c) stipulates the enterprise's human rights expectations of staff, business partners and other parties linked to its operations, products or services;
- d) is publicly available and communicated internally and externally to all personnel, business partners and other relevant parties; and
- e) is referenced and included in other relevant policies throughout the business.

In order to ensure the human rights policy is going to be effective, businesses should consult both workers and potentially affected communities as to what should be included. Businesses may also consult other reputable businesses, multistakeholder initiatives, civil society organisations, community-based organisations, customers, academics and socially responsible investors.

No policy can be effective unless it is public and communicated to all affected communities. The human rights policy must be reflected in operational policies and procedures. It is not enough that the human rights policy is there if other policies contradict it. Businesses must ensure that other policies do not prevent the implementation of the human rights policy.⁴⁰

II. Carrying out due diligence

In order to carry out its responsibility to identify, prevent, mitigate, account for and remedy adverse human rights impacts, a business is required to carry out due diligence. Due diligence refers to the actual actions that a business must take to stop potential adverse human rights impacts. There are four stages:

1. **Initial Assessment** – Businesses must identify and assess any potential adverse human rights impacts their activities may cause, contribute to, or may be caused by entities which they are directly linked to. Where communities and/or workers are likely to be affected, the businesses should carry out meaningful consultations recognising the communities' right to participate in decisions which affect them (see page 107). Businesses should ensure that communities are informed of the project, including the risks and potential effects that the business project may have. They should do this in language that the community prefers and can understand.
2. **Taking Measures** – Businesses should take measures to prevent and mitigate any potential adverse human rights impacts before they happen. They should inform communities of what measures they have taken to prevent and mitigate further adverse human rights impacts.
3. **Tracking** (Checking) – Businesses should check whether these measures have been successful in the prevention of adverse human rights impacts. In doing so they should consult the communities.
4. **Communication** – Businesses should communicate what adverse human rights impacts they have identified and what steps they have taken to prevent potential adverse human rights impacts and provide remedy for actual adverse human rights impacts to affected communities.⁴¹

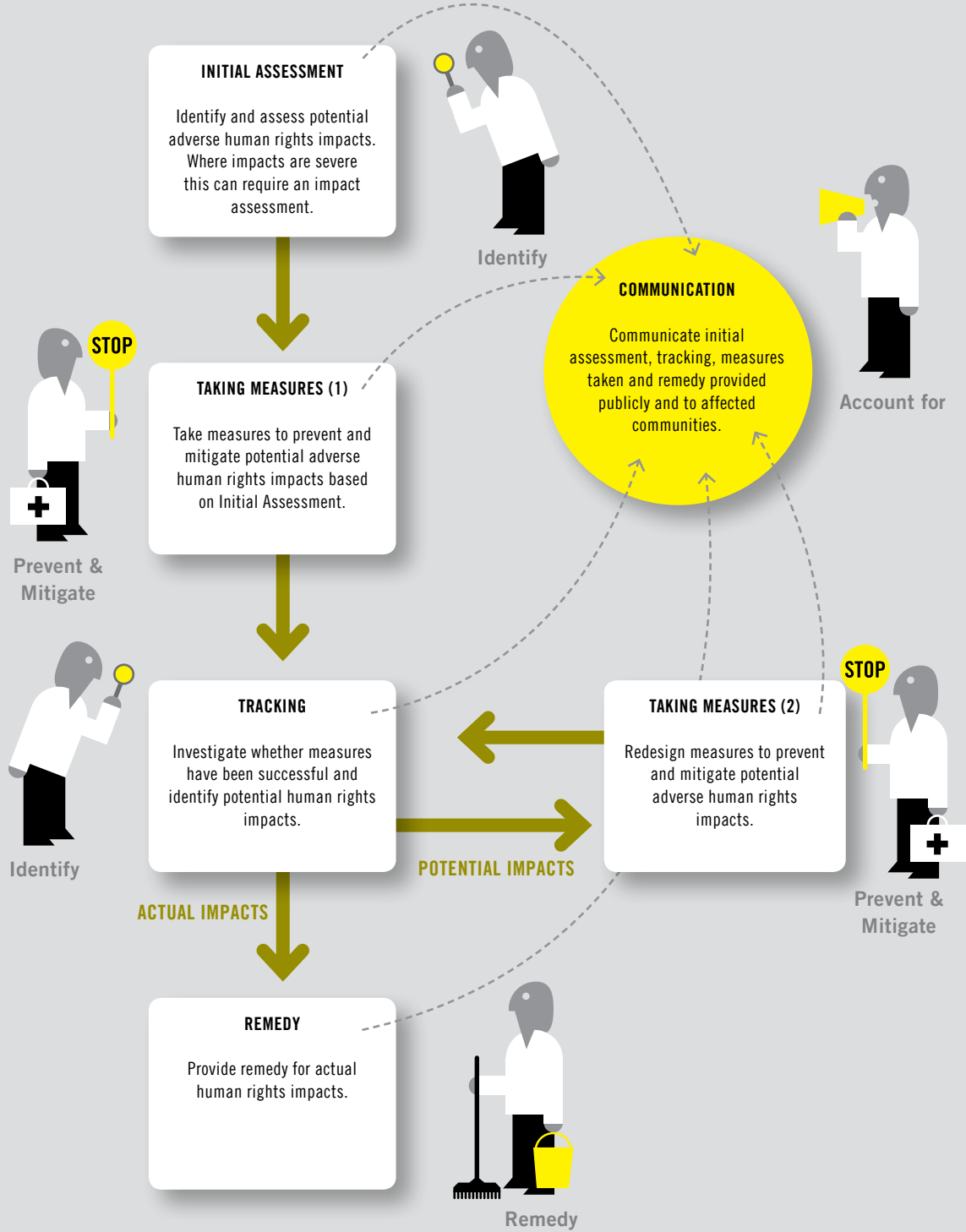
This process is often referred to as knowing and showing. It is not enough that a business claims that it does not commit human rights abuses. It must know that it does not commit human rights abuses through continual checks and consultation with communities, and it must show it through communicating what actions it has taken.

» «

POTENTIAL ADVERSE HUMAN RIGHTS IMPACT V. ACTUAL ADVERSE HUMAN RIGHTS IMPACT

- » An actual adverse human rights impact is one that has happened or is happening. A potential adverse human rights impact is one that may happen but has not so far happened.
- « A business is required to prevent potential adverse impacts from happening and remedy actual adverse human rights impacts that have happened.

FIGURE 8: CARRYING OUT DUE DILIGENCE



III. Providing Remedy

A business must provide remedy for actual adverse human rights impacts that it has caused or contributed to. Remedy provided directly by a business may include:

- an apology on the part of the business for any wrongdoing;
- compensation for any harm (financial or non-financial); and
- an end to any activity resulting in adverse human rights impacts. This may include terminating a relationship with another party committing a human right abuse (e.g. a State, business partner or supplier) and may include taking measures to ensure no future adverse human rights impacts occur. Remedy is discussed further in section 3.7.

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MANDATORY DUE DILIGENCE

A businesses responsibility to respect exists independently of law. Businesses are expected to undertake the actions described above even when they are not required to do so under either national or international law. There has been ongoing debate as to whether and how States should make human rights due diligence compulsory under national law (under there State duty to protect). The International Committee on Economic, Social and Cultural Rights affirmed that States are required to have a legal framework requiring business entities to exercise human rights due diligence in relation to those rights under the International Covenant on Economic, Social and Cultural Rights. This includes requiring businesses to exercise their influence over their subsidiaries, business partners and suppliers abroad, and having appropriate monitoring and accountability mechanisms in place.⁴²



- UN Office for the High Commissioner on Human Right, 'The Corporate Responsibility to Respect Human Rights: an Interpretive Guide' (2012). www.ohchr.org

2.5 State-Business Relationships

Whilst international human rights standards distinguish between an obligation on States to respect, protect and fulfil human rights and responsibility on businesses to respect human rights, in practice States and businesses are not always separate and work together. Below are some of the types of relationship that a State may have with a business:

1. **State ownership of businesses** – Where a State owns, or effectively controls, a business.
2. **State support of business** – Where a State provides financial or other support to a business.
3. **Privatisation** – States may contract out public services (services a State must provide to ensure it meets its human rights obligations such as schools, healthcare and policing) to businesses.
4. **Legal licenses** – States may provide for a license to carry out work that businesses would not be able to carry out without the license e.g. a mining concession.
5. **State contracts with business** – Where a State contracts with a business to provide goods and services to the State e.g. where European States require purchases of logging to be from businesses that do not commit human rights abuses (see the case of the Forest Stewardship Counsel and Dalhoff Larsen and Horneman in Liberia on page 101).
6. **Lobbying** – A business may lobby a State to pass laws or otherwise act in a way that serves business interests over public interests and may lead to human rights abuses.
7. **Corruption** – A business may have an undue influence on a State through corrupt means such as bribery or *vice versa*.

2.5.1 State ownership/control of a business

Where a business is owned or effectively controlled by a State then it is treated as part of the State and any human rights abuse it commits is a human rights violation committed by the State (see page 59). Any human rights abuses would also contravene the business's responsibility to respect.

2.5.2 State support of a business

Different types of institutions may provide support and services to businesses including organisations that provide government funding or lending to businesses that carry out businesses abroad (including organisations called credit export agencies). In such cases, these agencies are required to take steps to prevent businesses they invest in from committing human rights abuses where human rights abuses are possible (Guiding Principle 4 Commentary).

2.5.3 Privatisation

States may contract out public services (services a State must provide to ensure it meets its human rights obligations such as schools, healthcare and policing) to businesses. In doing so, the State is still responsible for the fulfilment of human rights and is still responsible for any services providing the means for the realisation of human rights which it has privatised. In order to meet its human rights obligations, a State must put human rights provisions into contracts and laws that relate to the privatization and must set up bodies that supervise the business's activities including independent monitoring and accountability mechanisms (Guiding Principle 5).



PRIVATISED PRISONS BEFORE THE UN HUMAN RIGHTS COMMITTEE (CABAL V AUSTRALIA)

The Australian government privatised its prison services, so that many of its prisons were administered by a business. Two prisoners were placed in a small cage where they were required to sit and stand alternately. A complaint was taken to the UN Human Rights Committee (*Cabal v Australia*). The State argued that the business ran the prison and it was not responsible for the human rights abuses. The UN Human Rights Committee found that the fact that the prison was not run by the State did not remove the State's responsibility to ensure that the prison respected human rights. It concluded that the State was in violation of the prisoners' rights to liberty.⁴³



2.5.4 Legal Licenses

A legal license (see page 30) may result in three separate human rights issues:

1. The legal license must not abuse human rights itself (the State obligation to respect).



1) THE LEGAL LICENSE MUST NOT ABUSE HUMAN RIGHTS ITSELF (LANSMAN V FINLAND)

Finland provided a mining concession (legal license) to a business to set up a large quarry close to where communities lived. These communities alleged that their cultural rights had been infringed by the State, referencing the religious significance of the mountain and intrusions to their hunting of deer. A complaint was taken to the UN Human Rights Committee. The Committee found that, even though the communities complaints related to the business's activities, the State had a responsibility to ensure that the project did not violate human rights. It looked at whether the legal license itself provided sufficient safeguards to prevent human rights abuses. It concluded that the communities had been sufficiently consulted during the design of the project, and that the project was limited to areas that the community used less often and did not have enough of an impact on them to constitute a violation of human rights.⁴⁴

2. Sometimes a State allows a business to exercise powers which are normally limited to the State, such as the power to arrest people or make laws. For instance, a State may allow oil businesses to hire armed individuals for security purposes. Any State powers transferred to the business must remain under the close supervision of the State (Guiding Principle 4).



2) STATE POWERS MUST REMAIN UNDER CLOSE SUPERVISION OF THE STATE (SG-SOC IN CAMEROON)

An example of this is in Cameroon where the government granted a lease (legal license) for the construction of a palm oil plantation to the business SG-SOC. The legal license covered an area where thousands of people lived. It allowed the business to arrest and detain anyone 'unauthorised' to be there. Local villagers have reported physical abuse by security forces hired by the business. Where businesses exercise such public powers, it is even more necessary that they are closely regulated by the State.⁴⁵

3. The legal license must contain conditions that the business respects human rights (Guiding Principle 6).

2.5.5 State contracts with business

States should promote respect for human rights by business enterprises with which they make any kind of contract including any purchase or sale, including putting human rights requirements into contracts with businesses (Guiding Principle 6). Governments can choose to only contract with businesses which have a positive human rights record, thus encouraging businesses to improve their human rights performance in order to do more business with governments in the future.

2.5.6 Lobbying

Sometimes, businesses will attempt to influence decisions made by officials in a government regarding the passing of laws and regulation (lobbying). Lobbying by businesses frequently lacks transparency. No-one knows what issues are discussed or agreements made in closed-door meetings between senior company executives and ministers and civil servants. Often these laws and regulations will have consequences for the realisation of human rights.



LOBBYING

Amnesty International has two key recommendations for requirements on lobbying:

- Public disclosure – a public list of who lobbies, for what, and the nature of the decisions made by governments and State agencies on the basis of the positions of business. Specific oversight bodies should also be established with the objective of ensuring the public interest.
 - A human rights interests test – home States and International Financial Institutions must ensure their attempts to influence host State policy will not negatively impact on human rights.
-

Corruption is likely to lead to a further mixing of the State and businesses, with the interests of businesses determining the policies of States and vice versa. Human rights abuses are likely to result as corruption will promote the interests of businesses and the personal interests of government officials over public interests, including the realisation of human rights. It can allow critics to be silenced, a failure to provide just institutions and for corporate impunity for human rights abuses. To see what actions States must take to prevent corruption see section 3.6.

Regardless of the relationship a State has with a business, under international human rights law, a State always has the obligation to prevent, investigate, punish and redress human rights abuses committed by the business in its territory. Businesses also have a responsibility not to contribute to human rights violations committed by States, and to exercise leverage over States with whom they have a business relationship to prevent them from committing human rights violations (see pages 75-77).



SURVEILLANCE IN ETHIOPIA

Human Rights Watch provided a report examining the role of different technology businesses in providing the Ethiopian government with technology to carry out surveillance used to quell political dissidents. It alleged that several international businesses were complicit in the human rights violations committed by the Ethiopian government. It is the responsibility of these businesses to ensure that they do not contribute to human rights violations of the Ethiopian government and exercise leverage over the Ethiopian government to stop committing human rights violations.⁴⁶

2.6 International organisations

International organisations are organisations set up by States to govern matters requiring or benefitting from international co-operation. They often have their own functions and powers. International human rights organisations are set up by States to supervise the implementation of their human rights obligations. In some cases, they may hear complaints made by individuals or civil society organisations. They generally cannot hear complaints directly against businesses, but they can hear complaints against States for failing to meet their obligation to protect in relation to business-related human rights abuses.

UN Human Rights Treaty Monitoring Bodies

The UN human rights treaty monitoring bodies are composed of independent experts which require States to report on their implementation of their human rights obligations. They then review the State's performance of its human rights obligations. They often receive input from civil society organisations. Where the appropriate protocols are ratified, these bodies may also hear complaints of individuals who have had their human rights violated by the State. These bodies cannot look at the behaviour of businesses directly but can examine whether the State has fulfilled its treaty obligations. The following UN treaty bodies exist based on the nine core treaties:

- The Human Rights Committee supervises the International Covenant on Civil and Political Rights;
- The Committee on Economic, Social and Cultural Rights supervises the International Covenant on Economic, Social and Cultural Rights;
- The Committee on the Elimination of Racial Discrimination supervises the International Convention on the Elimination of All Forms of Racial Discrimination;
- The Committee on the Elimination of Discrimination against Women supervises the International Convention on the Elimination of All Forms of Discrimination against Women;
- The Committee against Torture supervises the International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- The Committee on Rights of the Child supervises the International Convention on the Rights of the Child;
- The Committee on Migrant Workers supervises the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;
- The Committee on the Rights of Persons with Disabilities supervises the International Convention on the Rights of Persons with Disabilities; and
- The Committee on Enforced Disappearances will supervise the International Convention for the Protection of All Persons from Enforced Disappearance (not yet entered into force).

UN Human Rights Council

The UN Human Rights Council also requires States to report on their implementation of their human rights obligations and allows for the review of States' human rights performance by other States. The UN Human Rights Council also has a complaints procedure. This procedure is not directed at businesses themselves, but complaints can be submitted against States for failing to meet their obligation to protect in connection to business-related human rights violations.



UN HUMAN RIGHTS COUNCIL

The UN Human Rights Council has had some important successes including:

- new human rights review and human rights complaint procedures;
- projects to address important issues including the right to privacy and the elimination of discrimination against women;
- the endorsement of important international standards, including the UN Guiding Principles on Business and Human Rights;
- establishing special sessions to address emergencies;
- establishing initiatives which have contributed to accountability efforts in several countries (including the Democratic Republic of the Congo);
- taking some steps to prevent gross and systematic violations (including Burundi); and
- ensuring that human rights remain visible among the activities of the UN.

Amnesty International criticisms of the activities of the UN Human Rights Council include that:

- many serious human rights violations go unaddressed;
- many acute and chronic human rights situations receive little or inadequate attention;
- many avoidable emergencies are not avoided;
- the accountability of States for human rights violations is severely limited;
- too many of the UN Human Rights Council's decisions and recommendations go unimplemented;
- some Member States of the UN Human Rights Council have very poor records for meeting their human rights obligations;
- Member States within the UN Human Rights Council can work together for political reasons rather than with the objective of finding solutions to human rights problems;
- the processes of the UN Human Rights Council are difficult for smaller delegations and civil society organisations to take part in. Some civil society organisations risk being persecuted by States if they raise human rights issues in the UN Human Rights Council; and
- other UN institutions, such as the UN Security Council, do not adequately take account of human rights in their activities. The work of the UN Human Rights Council should be integrated into the work of the United Nations as a whole.

UN Special Rapporteurs

UN Special Rapporteurs often conduct fact-finding missions to countries to investigate allegations of human rights violations. They can only visit countries that have agreed to invite them. Special Rapporteurs also assess complaints from alleged vic-

tims of human rights violations. If they decide the complaint is legitimate, an urgent letter or appeal is sent to the government that has committed the violation. If no complaint has been made, Rapporteurs may intervene on behalf of individuals and groups of people of their own accord.



UN SPECIAL RAPPORTEUR AND THE SPILLING OF TOXIC WASTE

In 2006, Trafigura, a Dutch international business, sent a ship to the Netherlands where it attempted to have dangerous chemical wastes removed from its tanks. After determining that the wastes were significantly more dangerous than estimated, the port services decided that the removal of the waste would cost significantly more than originally quoted. Trafigura refused to pay the fee and travelled to Côte d'Ivoire where they paid a much lower price for the dumping of the waste.

The waste was then dumped in various locations, none of which had the proper facilities to deal with chemical waste. Fumes from the waste entered the air and nearby drinking water. Thousands of individuals visited healthcare centres complaining of various health problems. At least fifteen people died.

The UN Special Rapporteur on the adverse effects of the movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights carried out a fact-finding mission into this incident, including visits to both the Netherlands and Côte d'Ivoire.

His review of the role of Trafigura was focussed on the business's responsibility to respect. Amongst other recommendations, he recommended that Trafigura provides remedy for the human rights abuses and ensures that it assesses, and discloses, the actual and potential impacts of its activities, including assessing the impacts that may follow from providing waste to others.⁴⁷

International Labour Organisation (ILO)

The International Labour Organisation supervises States' compliance with its ILO standards (see page 40). Two International Labour Organisation bodies (the Committee of Experts on the Application of Conventions and Recommendations and the Tripartite Committee on the Application of Standards of the International Labour Conference) review the reports submitted by Member States detailing the measures they have taken to implement the provisions of the ratified Conventions. Complaints may be submitted by trade unions, amongst others, either through the Representation Procedure where violations of ratified conventions may be raised or to the Committee on Freedom of Association where violations of freedom of association and collective bargaining rights may be raised.



- International action against child labour: Guide to monitoring and complaints procedures (Anti-Slavery International 2002). <http://lastradainternational.org>

UN Global Compact

The UN Global Compact is a voluntary initiative based on business's commitments to implement universal sustainability principles and to take steps to support UN goals. The UN Global Compact has ten principles which cover human rights, labour rights, the environment and anti-corruption. These include principle 1, that 'businesses should support and respect the protection of internationally proclaimed human rights' and principle 2, that they should 'make sure that they are not complicit in human rights abuses.' The UN Global Compact requires businesses which have signed up to become members to report on their progress with implementing the human rights principles.



UN GLOBAL COMPACT

The UN Global Compact is the UN's most high profile engagement with businesses. Amnesty supports the broad goals of the Global Compact. However, there are concerns that the Global Compact's small secretariat has limited resources, and does little to monitor whether businesses are adequately reporting to them. The UN Global Compact also lacks accountability mechanisms where member businesses breach Global Compact's principles.

African Commission on Human and Peoples' Rights (ACHPR)

The African Commission is a treaty body with the mandate to ensure the promotion and protection of human rights on the African continent, in accordance with the African Charter on Human and Peoples' Rights. It contains many, but not all, of the human rights in the International Bill of Rights (see pages 71-72). It also contains people's rights; the disposal of natural resources should only be in the interests of the people (art. 21), people have a right to economic, social and cultural development (art. 22), people have a right to peace (art. 23) and people have the right to a clean and satisfactory environment (art. 24). The African Court of Human Rights covers the same rights as the African Commission. Unlike the African Commission, it has not yet dealt with any cases concerning business and human rights issues.

Regional African International Tribunals

As well as the African Commission, several African Regional Economic Communities have international tribunals that may look at human rights concerns including:

- The ECOWAS Community Court of Justice
(for the Economic Community of West African States)
- The COMESA Court of Justice
(for the Common Market for Eastern and Southern Africa)
- The SADC Tribunal (for the Southern African Development Community)
- The East African Court of Justice (for the East African Community)



- FIDH, 'Corporate Accountability for Human Rights Abuses: A Guide for Victims and NGOs on Recourse Mechanisms: International Mechanisms'. www.fidh.org

This list is not exhaustive. Other international human rights organisations can also play a role in the business and human rights regime, including environmental organisations, International Financial Institutions (see next page) and the UN Security Council (see the example below).



THE UN SECURITY COUNCIL AND INTERNATIONAL BUSINESSES' INVOLVEMENT IN THE SECOND CONGO WAR

During the Second Congo War in 2000, the UN Security Council established a UN Panel to investigate the illegal exploitation of natural resources and other forms of wealth in relation to the ongoing conflict. Some international businesses were guilty of funding the conflict through various relationships with rebel forces, including buying stolen resources and selling weapons. Even after the withdrawal of the foreign armies, there were networks of co-operation between businesses and criminal armed groups (both foreign and Congolese). The UN panel looked at the role of businesses and recommended that restrictive measures be taken against those businesses involved in arms supply and resource plundering.⁴⁸

2.7 Financial institutions

Where an international business or State is setting up a business project, it often requires a loan from a financial institution. A financial institution refers to any actor which provides financial services (e.g. a bank providing loans for business projects or insuring business projects). An International Financial Institution is a specific type of financial institution. It is an international organisation: an actor set up by multiple States. The roles, powers and duties of International Financial Institutions are often included in the international agreement with which they are founded.

While International Financial Institutions often play a prominent role in financing business projects that may result in human rights abuses, the extent to which they have their own international human rights obligations is disputed. Their role in realising human rights is not necessarily the same as a business's responsibility to respect. Instead, States are required to ensure that they meet their human rights obligations when founding and participating in International Financial Institutions.

Principle 10 of the UN Guiding Principles on Business and Human Rights requires States to encourage International Financial Institutions to promote human rights and to prevent human rights abuses by businesses. States do not lose their human rights obligations when they participate in International Financial Institutions. They must ensure that their participation in International Financial Institutions does not negatively affect their ability to meet their human rights obligations.



HUMAN RIGHTS OBLIGATIONS OF INTERNATIONAL FINANCIAL INSTITUTIONS

International Financial Institutions have a responsibility to respect human rights. This is increasingly recognised by States. At a minimum, they should:

1. Put in place a robust human rights due diligence mechanism, fit to adequately identify and prevent risk to human rights as a result of all activities supported by the International Financial Institution.
2. Present Member States with and encourage them to adopt safeguards policies which are fully in line with international human rights law and standards.

In response to the increasing understanding of their role in adverse human rights impacts and negative environmental impacts, many International Financial Institutions have developed investment standards which may, directly or indirectly, have requirements that projects they invest in do not result in certain human rights abuses. Some examples of these institutions are discussed below.

The World Bank Group

The World Bank Group is an organisation which provides loans both to States and businesses for infrastructure projects. Its main shareholder is the United States of America. The institutions within the World Bank Group that lend to States are the International Bank for Reconstruction and Development and the International Development Association (both of which together are referred to as the World Bank). The International Finance Corporation is the organisation within the World Bank Group which finances businesses directly. The World Bank Group has investment safeguards (the Environmental and Social Framework) which cover environmental issues and the health and safety of workers and communities. The International Finance Corporation has the Environmental and Social Sustainability Policy, which sets out the International Finance Corporation's own commitments and requires some businesses which the International Finance Corporation invests in to meet the International Finance Corporation Performance Standards on Environmental and Social Sustainability. These relate to environmental and social impacts, including carrying out an environmental and social impact assessment (see page 124), labour conditions, pollution prevention, health, safety and security, land acquisition/displacement, biodiversity, indigenous peoples and cultural heritage.



WORLD BANK INVESTMENT SAFEGUARDS AND INTERNATIONAL FINANCE CORPORATION'S PERFORMANCE STANDARDS

Amnesty International supports the World Bank taking efforts to improve its human rights performance. However, it has many concerns over the World Bank's Investment Safeguards including the following:

- They do not explicitly incorporate human rights due diligence processes, which are necessary to identify risks to the human rights of communities affected by the Bank's projects and policies.
- They do not include a clear policy commitment to human rights and a statement that the Bank will not support activities that are likely to cause or contribute to human rights abuses. There is no reference in the main text to human rights instruments.
- They do not adequately deal with key issues including disability, gender and health. While a separate directive is included which references vulnerable groups, there is no proper safeguard against discrimination against these groups.
- They do not properly refer to the full scope of labour issues. For instance, they do not include the right to form a trade union.
- They only apply to an increasingly small percentage of the Bank's activities and do not include activities such as policy loans and technical advice to governments.
- The impact assessments and other processes do not include human rights.
- They do not use the same language as human rights standards.
- The systems which implement the safeguards policies are not effective.
- They place primary responsibility to carry out these duties on the borrower rather than on themselves.

It has many concerns over the International Finance Corporation's Environmental and Social Sustainability Policy including the following:

- There is no acknowledgement of its responsibility to respect human rights.
- Its Sustainability Framework restricts the need for clients to conduct a human rights due diligence process to 'limited high risk circumstances'. Even then, this is purely optional for clients.
- Its Performance Standards fall far short of the human rights due diligence requirements, as set out in the UN Guiding Principles on Business and Human Rights.
- Its recognition of the standard of Free, Prior and Informed Consent applies to a narrower set of circumstances than those in the UN Declaration on the Rights of Indigenous Peoples.

DID YOU KNOW

At the end of 2015, the African Development Bank had made 112 billion US dollars of loans and grants since 1967, through some 4370 operations. In 2015, it disbursed some 8.8 billion US dollars in 240 operations.⁴⁹

African Development Bank (AfDB)

The African Development Bank is an African Union organisation and states that its mission is to fight poverty and improve living conditions on the continent through promoting investment in projects and programmes that contribute to development. It has an Integrated Safeguards System which includes safeguards on (1) environmental and social assessment, (2) land acquisition, (3) biodiversity, (4) prevention of pollution and (5) labour conditions.

European Investment Bank (EIB)

The European Investment Bank is an institution of the European Union. It provides more project finance than any other International Financial Institution, although it currently provides less investment in Africa than either the African Development Bank or the World Bank Group. It has environmental and social safeguards which include rules on impact assessments, the prevention of pollution, biodiversity, climate change, cultural heritage, involuntary resettlement, rights and interests of vulnerable groups, labour standards, health, safety and security and community consultations. As an institution of the European Union, it is also required to comply with rules on good administration and human rights.



EIB INVESTMENT SAFEGUARDS

Amnesty International is supportive of the European Investment Bank taking efforts to improve its human rights performance. It has many concerns regarding its investment safeguards including that:

- the references made to human rights in the text are not consistent and coherent;
- they do not meet international human rights standards, particularly in practice;
- they do not explicitly require human rights due diligence in relation to all activities in line with international human rights standards;
- they do not clearly define which human rights responsibilities the bank has and which responsibilities the actor invested in has; and
- they only require consultations with affected communities at certain phases of the project.



FORCED EVICTIONS IN KENYA

The Kenyan government was building a large highway infrastructure project. It received investment for the project from the African Development Bank and the European Investment Bank. Many families lived in Jomvu, an informal settlement that was on land where the planned highway was. Construction workers and armed police arrived at the settlement during the night and demolished the homes and businesses within the settlement leaving the occupants homeless.

Both the African Development Bank and the European Investment Bank have safeguards against forced evictions but they invested in the project without carrying out adequate due diligence to identify and prevent the evictions. Following a report by Amnesty International, the Kenyan government and the banks stated that they agreed to provide remedy to those who were evicted. The banks agreed that the resettlement plan should be revised in line with the banks' policies and expectations.⁵⁰

As well as International Financial Institutions, other financial institutions also provide finance to business projects including privately-owned institutions and State-owned institutions. These financial institutions have a responsibility to respect human rights which means they must identify, prevent, mitigate, account for and remedy any adverse human rights impacts they cause or contribute to, and they must identify, prevent, mitigate and account for adverse human rights impacts caused by others they have business relationships with, including those actors to whom they provide finance. In addition, State-owned financial institutions' actions are attributable to the State (see page 26), and they must not carry out any action that would violate a State's human rights obligations.

2.8 International Soft Law Initiatives

The term ‘soft law’ refers to instruments which are not legally binding, but which do have a strong moral force because they have been officially adopted by international organisations and/or States. One of the main international soft law initiatives in business and human rights is the OECD’s Guidelines for Multinational Enterprises which provide standards on what responsible businesses should do. All businesses based in, or operating in, OECD States are expected to comply with these standards.

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THE OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES

The Organisation for Economic Co-operation and Development (OECD) is an international economic organisation of 34 rich countries founded to stimulate economic development and world trade including any European countries as well as the USA, Canada, Mexico, Australia, New Zealand, Israel, Japan and South Korea. No Sub-Saharan African countries are currently members.

The OECD produced the OECD Guidelines for Multinational Enterprises which are ethical standards on employment, human rights, the environment, transparency, corruption, taxation and other issues. They include the same requirements for businesses to respect human rights as the UN Guiding Principles on Business and Human Rights. There are also States which are not members of the OECD but which still adhere to the Guidelines, including Egypt, Tunisia and Morocco.

They are non-binding on businesses but adhering States are legally bound to set up National Contact Points (NCPs) to investigate complaints against businesses for failing to implement the OECD Guidelines for Multinational Enterprises. Complaints can be made to NCPs regarding a business based in the OECD State, regardless of where the human rights abuses take place. Hence, where the home State is an OECD State, communities may have the option to lodge their complaint with the National Contact Point.

A National Contact Point may provide mediation between communities and the business. If this mediation fails they can publish an official statement on their perspective of the dispute, which may consider whether the business complied with the Guidelines. Some NCPs have the powers to investigate human rights abuses and/or monitor the implementation of a mediation settlement. Different States’ NCPs vary in how they are set up and how effective they are. NCPs are not courts and cannot impose sanctions on businesses. The extent to which a business complies with an NCP’s recommendation is largely up to the business.



THE FRENCH NATIONAL CONTACT POINT AND A BUSINESS IN CAMEROON

A palm oil business, Société Camerounaise de Palmeraies (SOCAPALM), was granted a lease on land by the Cameroon government for the construction of a plantation, where many communities lived. Communities raised complaints about a lack of adequate alternative housing, damage to the environment and physical abuse of community members by security agents, amongst other issues.

In 2013, a complaint was taken to the National Contact Point (NCP) in France who offered to provide mediation for the conflict. One of SOCAPALM's four parent businesses (Bolloré) and a civil society organisation acting on behalf of the communities, Sherpa, accepted the offer of mediation. The NCP concluded that SOCAPALM had violated the OECD Guidelines for Multinational Enterprises. It recommended that the companies find a remedy to the violations. During the mediation an action plan was designed which covered a range of actions for the companies to take, including community dialogue, reduction of environmental nuisances, public services, local development, workers' rights, transparency and compensation of local communities for their loss of resources and lands.

In 2015, the NCP announced in a follow-up statement that the action plan had been adopted and that an independent organisation has been selected to monitor its implementation. Bolloré improved its community engagement policy, but the communities have not received effective remedy.⁵¹



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- OECD Guidelines for Multinational Enterprises. www.oecd.org

National Human Rights Institutions (NHRIs) are administrative bodies set up to protect or monitor human rights. Ombudsmen are public officials who work independently from government investigating individuals' complaints regarding actions taken by the government. Increasingly, many Ombudsmen work with human rights issues, and they may be considered to also be National Human Rights Institutions. The UN Guiding Principles on Business and Human Rights state that National Human Rights Institutions have an important role to play in the provision of remedy (Guiding Principle 27).



BUMBUNA INQUIRY

In Sierra Leone, African Minerals, a mining business, set up an iron ore mine in Tonkolili. The development and exploitation of the Tonkolili mine by African Minerals required the relocation of three communities. The business consulted the relevant paramount chiefs, but they did not appear to have engaged in meaningful consultations with the affected residents. The communities were relocated to land which was arid. There was less opportunity for farming and less access to water. Community members also lacked transport between their newly provided housing and the farm land they had been given, and they were consequently less able to afford education.

The mine suffered from many labour rights issues, and the workers formed a trade union, which was not recognised by the business or the State. The workers then protested. The Sierra Leone police were alleged to have shot live bullets and tear-gas indiscriminately in response. The result was one death and a number of gunshot and other serious injuries amongst the workers, as well as injuries, some serious, to a number of police officers. Further allegations were made that local youths had been in possession of petrol bombs, protesters had used shotguns in the demonstration and that the police had been responsible for arbitrary arrests, detention of workers and unauthorised entry into homes of members of the local community.

The Human Rights Commission for Sierra Leone, a National Human Rights Institution, carried out a full public inquiry. As a result, the government agreed to make changes, the police released an official apology and African Minerals agreed to increase wages by sixteen percent, increase monthly minimum wages, and committed to building several training centers. However, a subsequent report of the Sierra Leone Human Rights Commission showed that unaddressed workers' issues remained a problem, and there are questions as to whether the business will meet the terms of the agreements it made with the communities. No compensation was paid, and no sanctions were taken against the business or the police.⁵²

THE EDINBURGH DECLARATION

An international body was set up to monitor the operation and independence of National Human Rights Institutions; this is called the International Coordinating Committee (ICC). They evaluate each National Human Rights Institution's compliance with the Paris Principles, which aim to ensure their independence and effectiveness. The Paris Principles require that National Human Rights Institutions deal with 'any situation of violations of human rights.' They state that National Human Rights Institutions may have to deal with non-State actors (such as businesses) in relation to dealing with questions under its competence. The Paris Principles do not require that National Human Rights Institutions deal with complaints against businesses, although many National Human Rights Institutions do.

On 10 October 2010, the International Coordinating Committee announced the Edinburgh Declaration. The Edinburgh Declaration stated that National Human Rights Institutions should consider business and human rights issues including 'monitoring and receiving complaints of human rights violations by business entities, as well as other remedies [and] handling complaints related to corporate human right abuse using their quasi-judicial powers, including through conciliation, mediation, and making recommendations or orders to improve the situation.' An outcome of a complaint to a National Human Rights Institution or Ombudsman may result in recommendations or legally binding orders against businesses or States, may facilitate access to courts, and may result in mediation between communities and business, which may in turn lead to the provision of remedy.

2.10 Multistakeholder and Industry initiatives

In response to the increased pressure on businesses to respect human rights (see section 1.2.3), businesses increasingly engage in multistakeholder and/or industry initiatives that have human rights-related standards in their codes of conduct, performance standards and/or agreements with affected communities. Multistakeholder initiatives are organisations which can include businesses, States, civil society organisations and/or other actors. Industry initiatives are organisations which only include businesses. These initiatives cover various different industries and types of human rights. A few examples are below:

Labour Rights

- Social Accountability Accreditation Services – certifies factories, farms and other places, aiming to ensure they meet certain standards.
- Fairtrade International – Certifies products aiming to ensure that they are made in places which respect minimum working conditions.

Specific Types of Farming

- Coffee: 4C Association – aims to improve the economic, social and environmental conditions of the production of coffee.
- Sugar: BONSUCRO – aims to ensure that human rights and labour rights are respected in the production of sugarcane.
- Cotton: Better Cotton Initiative – aims to ensure environmental and labour standards are met in the production of cotton.
- Palm Oil: Roundtable on Sustainable Palm Oil – aims to ensure that environmental and human rights standards are met in the production of palm oil.

Specific Industries

- Clothing: Fairwear Foundation – aims to ensure that labour standards are respected in the production of clothing.
- Electronics: Electronic Industries Citizenship Coalition – aims to ensure that labour standards are respected in the production of electronics.
- Logging: Programme for the Endorsement of Forest Certification Scheme and Forest Stewardship Counsel – aims to improve the environmental, social and economic conditions of communities in forests.
- Security: see page 144 for examples.
- Conflict minerals: see page 153 for examples.



MULTISTAKEHOLDER INITIATIVES

Voluntary and multistakeholder initiatives in the sphere of business and human rights can be useful, particularly where they push forward the boundaries of corporate accountability, set higher standards of conduct for businesses or address serious business and human rights issues. However, these initiatives can be weakened, or made ineffective, by compromises to make members happy. Too often they provide for low standards of behaviour and members spend too much time with the processes of the initiatives rather than actually dealing with human rights issues.

Not all businesses join the initiatives, and some businesses join the initiatives but do not actually implement the principles. This can mean that multistakeholder initiatives are not always the best way to address an issue: regulation or law is necessary to secure human rights.

Here is an example of how a multistakeholder initiative can complement national laws.



THE FOREST STEWARDSHIP COUNSEL AND DALHOFF LARSEN AND HORNEMAN IN LIBERIA

Dalhoff Larsen and Horneman (DLH) is an international business which bought logged trees from Liberian businesses which were operating under Private Use Permits issued by the Liberian government. These Private Use Permits were obtained through fraud, corruption and without the consent of local communities and covered 23 percent of the land of Liberia. Dalhoff Larsen and Horneman has operations around the world and is headquartered in Denmark, which is a member of the European Union. The EU passed a law called the Timber Regulation which requires companies to not have illegal activity in their supply chains. States which are members of the EU must have criminal sanctions to stop the illegal log trade and are required to carry out checks on businesses to ensure they are compliant on the law.

The Liberian government has national laws that govern when permits (legal licenses) can be given to businesses to carry out logging. It carried out an investigation which found that Private Use Permits were illegal due to widespread fraud and corruption. It cancelled these permits and has placed criminal charges on eight government officials involved. No compensation has been paid to the communities.

Many European countries have also passed policies where they only buy logs that have been certified by a multistakeholder initiative such as the Forest Stewardship Counsel. Dalhoff Larsen and Horneman was a member of the Forest Stewardship Counsel which required it to meet certain standards, including that it consults communities before carrying out logging and that it complies with national laws. Several studies show that logging businesses that meet these standards make more money because governments will buy more from them.

Global Witness, a civil society organisation, discovered logs that appeared to be illegally logged under Private Use Permits in Liberia in front of the business's warehouse in France (also a member of the EU). The French police did not investigate the logs found in front

of the warehouse. The Danish Nature Agency, which is responsible for checking that businesses have not broken the law in Denmark, carried out checks on Dalhoff Larsen and Horneman. It found that the business was compliant with the due diligence standards of the Timber Regulation. Global Witness criticised the Danish government for not looking properly at the allegations that the business had been caught selling illegal logs to France. Global Witness filed a complaint with the Forest Stewardship Counsel. The Forest Stewardship Counsel found that Dalhoff Larsen and Horneman had not carried out proper due diligence and could no longer be a member. It stated that if it wanted to rejoin as a member then the business would have to compensate the communities in Liberia that were affected by the logging for any losses they suffered. Dalhoff Larsen and Horneman promised to meet these requirements but has so far failed to do so. Global Witness has taken the results from the Forest Stewardship Counsel's investigation to campaign for further reforms in Liberia, France and Denmark.⁵³

Another example are the Equator Principles which are voluntary principles for State- and privately-owned financial institutions.

i

EQUATOR PRINCIPLES III

Around 80 State- and privately-owned financial institutions have adopted the Equator Principles, which cover a large proportion of international project finance. The Equator Principles III require banks to do the following:

- Carry out due diligence to ensure that potential environmental and social impacts are identified.
 - Design measures to minimise and mitigate adverse environmental and social impacts. Where projects may have many significant adverse environmental and social risks and/or impacts then an environmental and social impact assessment must be carried out. Where projects have limited adverse environmental and social impacts, then an environmental and social impact assessment should be carried out where appropriate. Any impact assessment must be publicly available and reviewed by an independent expert.
 - Ensure that those businesses they invest in comply with national laws, International Finance Corporation's Performance Standards on Environmental and Social Sustainability and the World Bank Group's Environmental, Health and Safety Guidelines. Where applicable standards are not met, the financial institution should require the business to develop an action plan to take actions to meet the standards.
 - Ensure consultations with affected communities are carried out. Consultation processes should be tailored to the risks and impacts of the financed project, the Project's phase of development, the language preferences of the affected communities, community decision-making processes and the needs of disadvantaged and vulnerable groups. Projects with adverse impacts on indigenous peoples will require their Free, Prior and Informed Consent (FPIC).
 - Ensure that the business they invest in establishes a non-judicial grievance mechanism designed to receive and resolve concerns and grievances about the project's environmental and social performance. The mechanism should not impede access to judicial or administrative remedies.
-



THE EQUATOR PRINCIPLES

The Equator Principles are voluntary standards to ensure the banks finance only those projects that are 'socially responsible and reflect sound environmental management practices'. Yet, as research by Amnesty International on projects that receive funding from banks that have adopted these principles illustrates, these policies fail to ensure that the legal framework governing these projects respects human rights.

The standards in the Equator Principles are based on the International Finance Corporation's Performance Standards and the World Bank Group's standards. These standards are utterly insufficient to guard against negative human rights impacts on individuals and communities.

Here are some common myths about business and human rights issues and the facts on how business and human rights actually works.

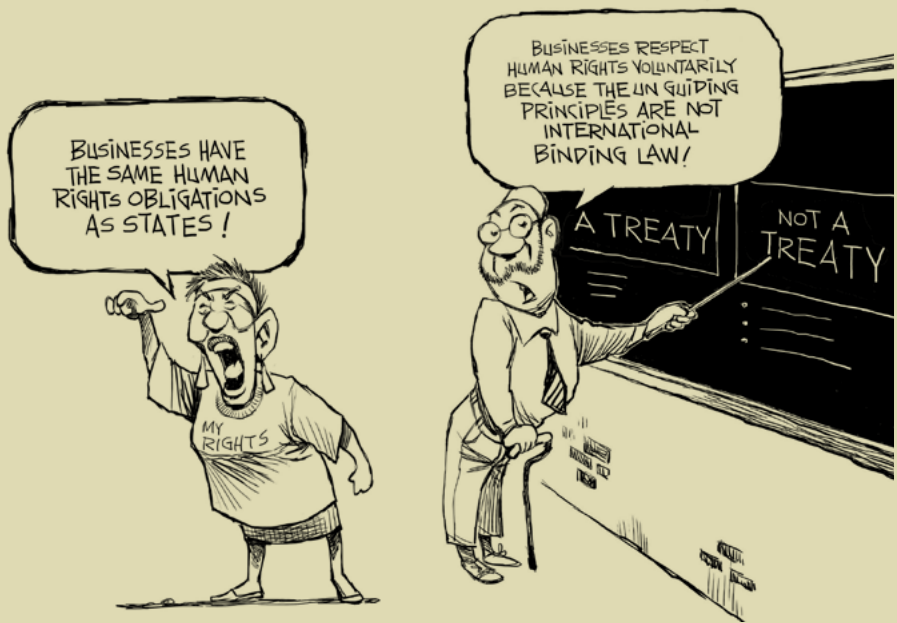
MYTHS



FACTS

A State has the obligation to take steps to ensure that any actor, including a business, does not commit human rights abuses within its territory. These steps are referred to as a State's due diligence. For example, if a business commits a human rights abuse and the State fails to investigate and ensure remedy for the abuse is provided (including punishing the wrongdoer), then the State has breached its human rights obligations (see section 3 for more information on a State's obligations in respect of specific issues).

Everyone has a moral responsibility to work together to secure the fulfilment of human rights, including businesses. Businesses have a responsibility to respect human rights due to their specialised role within society (as recognised in the Respect, Protect, Remedy Framework) and their increasing impact on human rights. They must also comply with national laws. States should ensure national laws require businesses to respect human rights.



Businesses are not the same as States. They fulfil a different role in society. A State has the human rights obligations to respect, protect and fulfil human rights. A business has the responsibility to respect human rights.

The UN Guiding Principles on Business and Human Rights are non-binding on States and businesses. However, the obligations on the State are based on binding international law and they were unanimously endorsed by the UN Human Rights Council. They have been welcomed by various representatives of business and reproduced in several other international standards. They therefore represent an authoritative standard of conduct.

2.11 Civil Society Organisations

Civil society organisations refers to non-governmental organisations which are independent from the government and ideally reflect the will of citizens. Civil society organisations may include, but are not limited to: community-based organisations; human rights organisations; organisations representing disadvantaged or marginalised groups (e.g., women's organisations, Lesbian, Gay, Bisexual, Transgender/Transsexual and Intersexed (LGBTI) organisations and indigenous peoples' organisations); environmental organisations; trade unions; religious groups and political movements.

Civil society organisations increasingly work with international organisations, States, businesses and other actors, offering their expertise and ensuring community voices are heard. Civil society organisations also play an essential role in ensuring that these actors are held accountable to their social, policy and legal commitments, as well as communities' standards of expected conduct. In doing so, they often rely on international law and other international standards. They use a variety of means to do this:

- **Collecting and communicating information.** For example, they may monitor how much money is actually paid by businesses in taxes, or they may monitor how much land is being sold. Many NGOs help inform human rights treaty bodies regarding the human rights situation in a particular country.
- **Lobbying and advocacy.** For example, they may lead campaigns that highlight human rights abuses that businesses are directly linked to; they may write to, and communicate with, government officials regarding the need for better regulation.
- **Rights education.** For example, explaining human rights standards to communities, government officials or business employees.
- **Participating in dispute resolution processes.** For example, providing evidence for use in court rooms and non-judicial grievance mechanisms.
- **Implementation of policies and programmes.** For example, a community development project funded by the State or a business may be run by a community-based organisation.
- **Collaboration in policy and law-making.** For instance, advising States on laws that allow for the participation of affected communities in impact assessments.
- **Monitoring, documenting and reporting.** For instance, a community-based organisation may help carry out a community-led impact assessment which documents the human rights impacts of a business project.
- **Encourage businesses** to meet human rights standards by participating in multistakeholder initiatives (see page 100).



- SOMO, CEDHA and Cividep India, 'How to use the UN Guiding Principles on Business and Human Rights in company research and advocacy: A guide for civil society organisations'. www.somo.nl

2.12 Communities

Communities have a right to participation in decisions which affect them. The right to community participation in decisions that affect them is *not* necessarily required in international human rights law, at least not in all contexts. However, community participation in decisions that affect them is connected to the idea that respect for the inherent dignity of the individual means that each person's expertise, experience and input must be valued. Every person is a valid speaking partner with a unique and valuable knowledge to contribute. Participation rights are increasingly recognised in national laws and policies, policies of businesses and policies of International Financial Institutions. This recognition of the need for community participation is partially driven out of the recognition that business projects are more successful when they have a social license with the community. Participation goes beyond being involved and means that communities have a genuine opportunity to influence and change decisions that affect them, often referred to as *meaningful* consultation.

Participation of communities in decisions that affect them should honour the human rights principles of: non-discrimination and equality, transparency and access to information, accountability and empowerment:

- **Non-discrimination and Equality** – All human beings must be able to enjoy and exercise their human rights on the basis of equality, free from discrimination of any kind. States are obliged to take all appropriate measures to ensure that every citizen has an effective right and opportunity to participate in political and public affairs on an equal basis. If impact assessments are to honour the principles of non-discrimination and equality they must be available, accessible, adaptable and acceptable:
 - Available – the opportunity to participate must be available to everyone affected by the decision.
 - Accessible – there must be no discrimination in who can access the mechanism; e.g. women, persons with disabilities and other vulnerable peoples should have equal access opportunities for participation. Their opinions should be equally heard and treated as equal.
 - Adaptable – opportunities for participation should take into account specific needs of the communities.
 - Acceptable – opportunities for participation should be designed and implemented in a way that respects the cultural values, norms and practices of the communities.
- **Transparency and Access to Information** – communities should have access to information which is accurate and understandable to enable them to make informed decisions.
- **Accountability** – there should be a complaints mechanism for communities to complain about any failings in the participation process. The participatory process should be evaluated by communities and monitored, if appropriate, by independent advisers.

- **Empowerment** – It is not enough that communities are just informed and consulted. Decisions regarding the project must be made together with the community including how the project is designed, what budgets are spent on, etcetera.



- Orsolya Toth, 'Normative Framework on Participation in the Conduct of Public and Political Affairs' (The Danish Institute for Human Rights, 2015. www.humanrights.dk)

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SPECIFIC HUMAN RIGHTS ISSUES

The objective of this chapter is to explain the role of the different actors discussed in chapter 2 in respect of some of the specific business and human rights issues discussed in chapter 1. These include:

1. Labour rights issues (and supply chains)
2. Damage to the environment (and impact assessments)
3. Displacement/Land Rights
4. Security Arrangements
5. Armed Conflict
6. Corruption
7. Access to Remedy

These issues are far from exhaustive but will serve to explain how different business and human rights initiatives can work in practice. They may also overlap: restrictive investment treaties may prevent adequate measures being taken to prevent pollution and other environmental damage; environmental damage may lead to the displacement of communities, which may in turn lead to conflict; modern slavery (and other labour rights issues) may result from conflict; corruption may lead to obstacles for community members in accessing remedy. Hence, many of these issues may relate to the same event. Some particular concepts are only discussed in the section deemed most relevant to them but may have implications for other issues. For instance, supply chains are discussed in section 3.1 and impact assessments are discussed in section 3.2 but both are relevant for many human rights impacts.

It should also be noted that there can, in some contexts, be a significant difference between:

- what people want States, businesses and other actors to do;
- what international standards expect States, businesses and other actors to do; and
- what States, businesses and other actors actually do in practice.

For instance, when an international business starts planning a mining project in an area near a community:

- the community may want the business not to commit human rights abuses or environmental damage, to share part of the profits with them and to offer jobs to local people;
- international standards do not require businesses to offer jobs to everyone or share profits but only to not commit human rights abuses; and
- the business may behave better than the international standards; it may provide community development projects or jobs in order to maintain good relations with the community. It may also behave worse than international standards; it may pollute a nearby stream or fail to pay compensation for land seized from communities. It could do both.

This chapter focusses on explaining international standards and what they expect of particular actors: States, businesses, multistakeholder initiatives etc. Examples of particular initiatives and examples of events are described in each section, which may be examples of how businesses, States and other actors deviate from international standards in practice. At certain points, initiatives and international standards will be described followed by Amnesty's perspective on how that initiative has worked, in general or in a particular context.

International standards should not be considered as an upper limit for what human rights advocates should campaign for. They are written and/or supported by States and they may set the lower standards of conduct than various people would like to be the case.

3.1 Labour rights issues (including supply chains)

Labour rights primarily concern the rights of employees and other workers in relation to them carrying out work for a particular business. Labour Rights issues are therefore different to, for instance, people losing their livelihoods because the land they work on has been transferred to a business without their consent. These issues will be discussed under displacement on section 3.3.

When understanding labour rights issues, it is helpful to understand the difference between the formal economy and informal economy. The formal economy refers to those business activities that are regulated and considered lawful. The informal economy refers to businesses that are partly or fully outside government regulation, taxation and inspection. It is not always clear cut who is working in the formal economy and who is working in the informal economy.

Formally employed workers are workers that have a legal basis, pay taxes and engage in regulated activities. An example is a doctor with a legal license to practice medicine whose activities are regulated and who pays appropriate taxes. Informally employed workers are workers that do not have a legal basis, do not pay taxes or are not engaged in regulated activities. An example is an unlicensed artisanal miner. In 2014, the International Labour Organisation estimated that, in Africa, around three quarters of workers are in vulnerable forms of employment.⁵⁴ Below is a discussion both of the acts that various actors should take and various actors have taken to prevent the violation of labour rights both in the formal and informal economy.

3.1.1 Host States

Host States have obligations to respect, protect and fulfil human rights. All African States (apart from Botswana, Mozambique and South Sudan) have ratified the International Covenant on Economic, Social and Cultural Rights which means they have legal obligations to respect protect and fulfil the rights to work, adequate livelihood and participate in a trade union, amongst others. They may also have ratified the fundamental conventions of the International Labour Organisation, as described on page 40. With regard to the actions of businesses, States should:

- prohibit labour rights abuses by businesses;
- prevent businesses from depriving any persons of their work or livelihood;
- protect the right of workers to associate with one another and form trade unions;
- safeguard the autonomy (independence) of workers' and employers' organisations;
- ensure that privatisation measures do not undermine workers' rights;
- establish an adequately staffed labour inspectorate to monitor compliance with rights at work; and
- establish an inexpensive and accessible system to resolve allegations of non-compliance.

Host States have an obligation to create an environment which helps businesses respect for human rights. The Commentary to Principle 3 of the UN Guiding Principles on Business and Human Rights requires that States should ensure their laws cover all business activities and that these laws encourage businesses to respect human rights. This includes properly recognising the entitlements community members have to use areas of land for their livelihoods.



ARTISANAL MINING IN NIGERIA

In Nigeria, many people are engaged in artisanal mining. Nigeria set up a programme to encourage artisanal miners to register under the law to help them regulate artisanal mining. The government set up an agency to provide technical assistance to those miners who formed registered businesses, but many people continued to act outside the law because of a lack of organisation, they needed to comply with laws that did not make sense for them and there was a lack of assistance from the government. Laws should offer incentives and reduce barriers to people to ensure that they work within the law and that their rights are acknowledged.⁵⁵

3.1.2

Home States

Home States are required to prevent businesses committing human rights abuses abroad through legal or political means. The existence and content of this obligation is disputed. Below are three examples of actions home States have taken to prevent and remedy labour rights abuses by their businesses in African States.



UK MODERN SLAVERY ACT

The Modern Slavery Act is designed to prevent businesses from engaging in slavery in the United Kingdom. It has limited requirements for businesses preventing slavery in their supply chains abroad. However, it does require that larger businesses publish what steps they have taken to prevent slavery in their supply chains. This is a reporting requirement only, meaning there are no requirements that businesses must take steps. However, it is likely that businesses will be encouraged to take steps as to publicly report that they are not preventing slavery in their supply chains will negatively affect their reputation.

CALIFORNIA TRANSPARENCY IN SUPPLY CHAINS ACT

The California Transparency in Supply Chains Act requires certain businesses operating in California to publish the efforts they are making, if any, to eradicate human trafficking and slavery from their supply chains. Like in the UK Modern Slavery Act, this is a reporting requirement and does not require businesses to actually take any action to prevent human trafficking of slavery in their supply chains.



FRENCH COURTS RULE AGAINST LABOUR RIGHTS ABUSES IN GABON

In Gabon, a train from a Gabonese business (Gabonese Ougououé Mining Company) transporting manganese from Gabon to Congo Brazzaville collided with a passenger train and killed more than 100 people. The business then filed for bankruptcy and laid off 995 workers without notice or compensation in 1992. Workers were told they would receive severance payments starting in 1993 which they stated they did not receive. In 2003, the Gabonese business compensated the Congolese government for the train accident and made arrangements for payments to be made to the dismissed workers. The workers said they never received compensation.

In 2007, a French business called ERAMET became majority owner of the Gabonese business. The workers took their case to the French courts who, after a long process, ruled that compensation should be paid to the Gabonese workers in 2015.⁵⁶

3.1.3

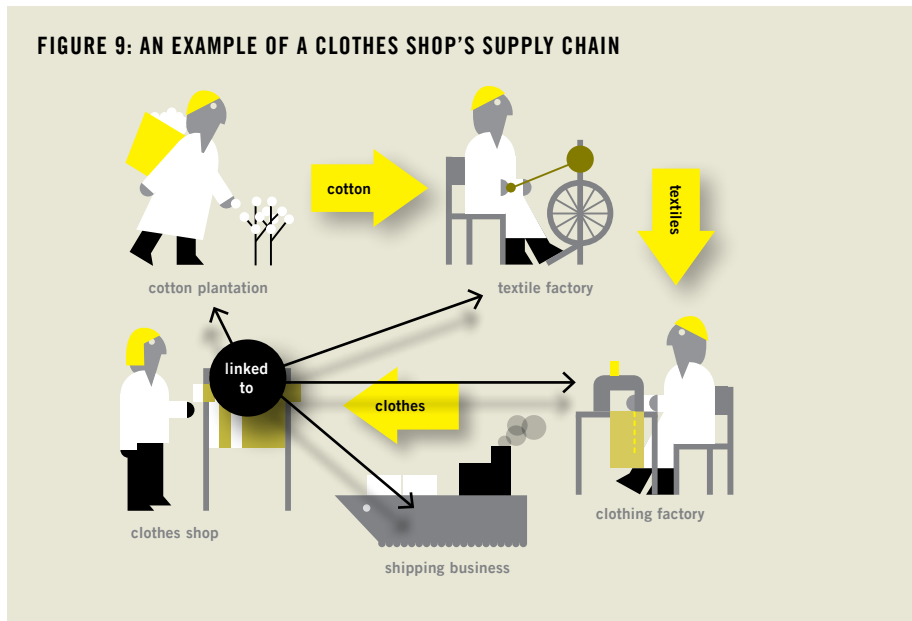
Businesses

Under the UN Guiding Principles on Business and Human Rights, businesses are required to respect the eight fundamental ILO Conventions, as described on page 40, as well as the rights to work, adequate livelihood, participation in trade unions and other relevant human rights in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. In addition to ensuring they do not commit labour rights abuses for those workers they hire, businesses are also required to exercise human rights due diligence in their supply chains.

Almost all businesses have supply chains. Supply chains refer to the other businesses that supply a business with goods and services, and it also refers to all the businesses that supply the suppliers with goods, and the businesses that supply them and so on. In cases where a supplier (e.g. a factory) commits an adverse human rights impact (e.g. it does not recognise the right for its workers to form a trade union) then it is responsible for this impact and must prevent the impact in future (e.g. recognising legitimate trade union action) and remedy the impact so far (e.g. pay the workers compensation). The businesses that buy from a supplier have human rights responsibilities to investigate, prevent and mitigate the supplier's adverse human rights

impacts, even when they do not contribute to these impacts (Guiding Principles 13 and 22). A business is not just directly linked to the supplier who supplies them directly, it is also directly linked to its entire supply chain.

Below is an illustration of how the clothes shop is directly linked by business relationships throughout its entire supply chain: the shipping business, the clothing factory, the textile factory and the cotton plantation. The shipping business is also directly linked to all the businesses in its supply chain (the clothing factory, textile factory and cotton plantation), the clothing factory to the businesses in its supply chain (the textile factory and cotton plantation) and the textile factory to the businesses in its supply chain (the cotton plantation).



Businesses which buy from suppliers should include, and increasingly do include, requirements in the contract that the supplier should respect human rights. These requirements may include a code of conduct which include labour rights (and other human rights) and monitoring and auditing by either the business or an independent third party. Auditing means that a supplier will be regularly subjected to inspections to ensure they are respecting human rights. However, this is not enough as suppliers may still cause adverse human rights impacts by not implementing the contract provisions or the supplier's supplier may cause adverse human rights impacts. For instance, the clothes shop may have a contract with the clothes factory and shipping business that they do not commit adverse human rights impacts but may have no contracts with the rest of its supply chain; it is still directly linked to its entire supply chain.

In the figure below, the clothes shop is required to carry out due diligence throughout its supply chain. However, the actions of the clothes shop may only reach the clothing factory and shipping business because the clothes shop does not have a contract or other direct relationship with the plantation or factory. The clothes shop may find it more difficult to require the textile factory or plantation to respect human rights, although it could require the clothing factory to carry out due diligence on its own supply chain. A business is always required to investigate, prevent, mitigate and account for adverse human rights impacts throughout its supply chain. This is not limited to labour rights but includes all human rights.

FIGURE 10: AN EXAMPLE OF A CLOTHES SHOP'S SUPPLY CHAIN AND DUE DILIGENCE



Examples of businesses with supply chain initiatives are: Nestlé, GAP, Telenor, Walmart, H&M, Anglo American, American Eagle, Ericsson, Nike, HSBC Holdings, Coca-Cola, Ikea and General Electric.

3.1.4 International Organisations

An important international organisation relating to labour rights issues is the International Labour Organisation. It requires periodic reports from States regarding the implementation of ratified conventions. Trade union organisations are able to comment on these reports. The International Labour Organisation has complaints procedures related to both ratified conventions and freedom of association (which relates

to any Member State regardless of whether the relevant freedom of association conventions are ratified). Its decisions are legally binding on States.

Complaints can be submitted by trade unions and employers' unions regardless of whether those unions are legal under national law and even in cases where they have been dissolved by the government. Complaints cannot be submitted by individuals. The International Labour Organisation's Conventions are binding on States so all complaints are against States not the businesses themselves. It does not provide compensation to victims, although it may work with the government concerned to see that workers are reinstated in their posts and that their trade union rights are protected. This is more useful in helping to remedy an ongoing situation than a situation that has already occurred.



INTERNATIONAL LABOUR ORGANISATION ON TRADE UNION VIOLATIONS IN ZIMBABWE

Four trade unionists complained to the International Labour Organisation (ILO) about criminal charges brought against them for refusing to pay unfair fines as well as alleged beatings and harassment committed by the police. The Zimbabwean government refused to cooperate with the process. The ILO condemned the government for not cooperating with the process stating that the charges brought against the trade unionists should be dropped and that the government should provide remedy for the beatings they received (including the punishment of those involved). It also criticised the general climate towards trade unions in Zimbabwe.⁵⁷

Complaints regarding human rights abuses related to labour issues (e.g. the right to work, the right to a livelihood, the right to participate in a trade union) may also be taken to the treaty bodies (discussed on page 87) provided the relevant complaints protocols have been ratified. In addition, complaints may be taken to African bodies including the African Commission on Human and Peoples' Rights (see example below).



AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS RULES AGAINST LABOUR RIGHTS VIOLATIONS

Abdoulaye Mazou, a magistrate in Cameroon had been put in prison by a military tribunal without trial. He was released, detained and then kept under house arrest for many years. After his release, he was not reinstated to his previous position as magistrate. The African Commission on Human and Peoples' Rights found that, by not reinstating the magistrate after it had adopted an amnesty law, the government had violated his right to work because the State had prevented him from working in his capacity of magistrate even though others who had been condemned under similar conditions had been reinstated.⁵⁸

3.1.5 Financial institutions

International Financial Institutions often have investment safeguards related to labour rights issues. For example:

- **The International Finance Corporation's** performance standards cover employees and have requirements relating to human resources, working conditions, trade unions and non-discrimination. The scope of their application is determined during the environmental and social risks and impacts identification process. More limited requirements exist for workers who are not directly employed but work through intermediaries (that they are reputable, that conditions are included in the contract and that the workers have access to a grievance mechanism) and for the employees of primary suppliers (those businesses which supply the financed business directly). In those cases, the international business is generally only expected to take action where there is a *high* risk of child labour, forced labour and/or serious safety issues and is dependent on the influence over the supplier.
- **The European Investment Bank's** Investment Safeguards also mostly apply to employees of the project invested in although it requires that organisations that provide non-employee workers and suppliers are reputable and meet these standards. It has rules on child labour, forced labour, migrant workers, non-discrimination, human resources, trade unions and unfair dismissals.
- **The African Development Bank's** Investment Safeguards apply to employees and have rules on child labour, forced labour, health and safety issues, migrant workers, non-discrimination, human resources, trade unions and unfair dismissals.

State- and privately-owned financial institutions also have a responsibility to respect human rights, including to identify, prevent, mitigate, and account for adverse human rights impacts that result from businesses and business projects they invest in.

The Equator Principles require member financial institutions to consider some labour issues and health and safety standards in their environmental and social impact assessments.



THE INTERNATIONAL FINANCE CORPORATION AND LABOUR RIGHTS ISSUES IN CAMEROON

Sonel was a privatised energy business in Cameroon. It was bought by an US international business called AES and became known as AES Sonel. AES Sonel received funding from several development banks including the International Finance Corporation, the African Development Bank and the European Investment Bank in order to develop the business's generation and transmission of energy.

Mr. Teumagnie, a Cameroonian employee of that business, argued that AES Sonel had brought in many US staff to take over key roles that had belonged to Cameroonians. These staff were paid salaries 25 times higher than local Cameroonian staff. He argued he had been wrongfully demoted. He took a complaint to the International Finance Corporation's

complaint mechanism: the Compliance Advisor Ombudsman (the CAO). The CAO interviewed Mr. Teumagnie and AES Sonel. They then engaged in a voluntary mediation basis, but they could not reach a solution that both parties agreed on.

The CAO then looked at whether it should do a proper investigation of the case. It came to the conclusion that the issues were of individual concern. They did not amount to substantial concerns over the overall environmental and social performance of the business project. They decided that the matter did not require an investigation and no further action was taken.⁵⁹

3.1.6 International Soft Law Initiatives

The OECD Guidelines for Multinational Enterprises include a chapter on labour standards. They expect businesses from OECD Member States to respect labour standards on trade unions and collective bargaining, child labour, forced labour, discrimination, provision of information in relation to the business and disputes to workers, consultation and co-operation with workers, the best possible wages, benefits and conditions of work within the framework of government policies, health and safety, employment of local workers and reducing the adverse consequences of dismissal.



THE US NATIONAL CONTACT POINT AND LABOUR ISSUES IN CAMEROON

Mr. Teumagnie, discussed in the case aforementioned, also took his complaint about AES Sonel to the US OECD National Contact Point. He argued that AES Sonel's hiring of American staff at much higher wages was discrimination against local workers. The US National Contact Point communicated with the US embassy in Cameroon to conduct local interviews and confirm the facts. AES Sonel submitted its response in June 2012. It rejected the allegations and explained that the salary differences are based on standard company procedures.

The US National Contact Point completed its initial assessment and decided to reject the case. The National Contact Point stated that there was no evidence for a possible race-related basis for the salary differences. It said that different wages between foreign and local staff was common amongst international businesses and was not inconsistent with the OECD Guidelines for Multinational Enterprises.⁶⁰

3.1.7 National Human Rights Institutions

National Human Rights Institutions (NHRIs) may also deal with labour rights issues.



THE CAMEROON NHRI AND LABOUR RIGHTS

The Cameroon National Commission on Human Rights and Freedoms is a National Human Rights Institution which has been accredited to A-status by the International Coordinating Committee (see page 99). It has six offices and approximately 140 commissioners and personnel in total. It receives complaints on human rights grounds including labour rights complaints. It has the power to interview witnesses, demand information from relevant authorities, mediate and provide legal assistance.

It has received complaints on unsafe and unhealthy working conditions, non-payment of wages and insurance payments, inadequate wages, unlawful restrictions on trade unions, unlawful termination, excessive hours, corruption and the employment of foreign workers instead of local workers. Some of these complaints have been resolved through mediation, where the National Human Rights Institution has resolved the problem through discussions between the worker and the business. Others have been referred to the Cameroon Labour Office or the Cameroon courts.

It is not known how many of these complaints are resolved. However, the National Human Rights Institution has indicated that securing responses from businesses was a challenge in general, as was the lack of resources to enable it to support victims by assisting them in taking matters to the courts.⁶¹

3.1.8 Multistakeholder and Industry initiatives

Increasingly, businesses have got involved in industry initiatives and multistakeholder initiatives to help prevent and mitigate adverse human rights impacts in their supply chain, particularly with respect to labour issues. An industry supply chain initiative is an initiative set up by multiple businesses that work in the same industry/area (e.g. clothing, food, electronics etc.). A multistakeholder supply chain initiative is a supply chain initiative set up by a multistakeholder initiative composed of businesses, civil society organisations and other actors.

Some examples of industry supply chain initiatives:

- **Electronic Industry Citizenship Coalition (EICC)** – An initiative set up by a collection of electronics businesses to improve the social, environmental and ethical responsibility of their supply chains.
- **Pharmaceutical Industry Principles for Responsible supply chain Management** – An initiative set up by a collection of medicine businesses to improve the conditions of their supply chains.

- **Business Social Compliance Initiative (BSCI)** – An initiative set up by a collection of international businesses that help businesses gradually improve working conditions in their supply chains.
- **Responsible Jewellery Council** – An initiative set up by a collection of international businesses involved in making jewellery that apply standards based on human rights, labour standards, environmental impacts and business ethics throughout their supply chains.

Some examples of multistakeholder supply chain initiatives:

- **Social Accountability International (SAI)** – A multistakeholder initiative composed of businesses, trade unions, and civil society organisations, which looks to apply human rights standards in supply chains.
- **Fair Labour Association** – A multistakeholder initiative, composed of universities, civil society organisations and businesses, which looks at labour standards in supply chains.
- **International Cocoa Initiative** – A multistakeholder initiative of businesses, trade unions and NGOs which aims to prevent child labour and forced labour in the West African cocoa supply chain.



MULTISTAKEHOLDER INITIATIVES AND THE PREVENTION OF CHILD LABOUR IN CÔTE D'IVOIRE

Nestlé is a Swiss international chocolate business. It joined a multistakeholder initiative called the Fair Labour Association. As part of its requirements for membership, the multistakeholder initiative conducts assessments of a sample of every member business every year. The Fair Labour Association conducted ten surprise visits to five different suppliers in Côte d'Ivoire. The programme confirmed that Nestlé had informed its suppliers of its code of conduct. Many also stated they had attended training sessions and had the code explained in their own language.

The investigators also found four incidences of child workers under fifteen including one of forced labour. They also found that all children carried out the same work and hours as adults and there were limited systems in place for identifying underage children or ensuring they were in school. There were also serious health and safety issues, discrimination against women, problems with inappropriate documentation and problems with the functioning of grievance mechanisms. Nestlé committed to several actions to correct these labour rights issues.⁶²

3.2 Damage to the environment (and impact assessments)

There is a strong link between environmental damage and human rights (see pages 41-42). States are bound to take steps to protect the environment under various treaties and customary international law.

Environmental law treaties cover various issues including the following:

- Protection of the atmosphere: UN Framework Convention on Climate Change, the Vienna Convention for the Protection of the Ozone Layer and the Convention of Long Range Transboundary Pollution;
- Protection of freshwater resources and the marine environment (e.g. fish): the Convention on the Protection and Use of Transboundary Watercourses and International Lakes and the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter;
- Protection of biodiversity: the Convention on Biological Diversity, the Convention on the Conservation of Migratory Species of Wild Animals and the Convention on the International Trade in Endangered Species of Wild Flora and Fauna; and
- Prevention of the dangerous disposal of hazardous sources: the Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal and the Convention on the Ban of the Import into Africa and the Control of Transboundary Movements and Management of Hazardous Wastes within Africa.

Once environmental damage occurs, it often becomes very difficult to restore things to the way they were before. It is essential that a preventative approach is taken to ensure that harm is not done in the first place. The main method by which this is done is an impact assessment. Impact assessments are scientific assessments of what the consequence of a particular business project will be. It looks at both the impacts that a business project will have and the impacts that a business project might have. Impact assessments can have a different focus on different types of impacts. Four types of impact assessment are described below, although this list is non-exhaustive and there is overlap between them:

- Environmental impact assessments look at the impacts of a potential business project on the environment: e.g. air pollution, land destruction and climate change.
- Social impact assessments look at what impacts a business will have on communities and people: e.g. community relocations, potential conflicts, migrant workers increasing demands for food.
- Human rights impact assessments are similar to social impact assessments, but specifically look at what impacts a business will have on communities from a human rights point of view: e.g. labour rights, right to food, right to protest, right to a clean and healthy environment.
- Gender impact assessments look at what particular impacts a project will have on men and women differently.

3.2.1 Impact Assessments

The most common type of impact assessment currently practiced is an environmental impact assessment. Human rights may be included in an environmental impact assessment and, because of the role of communities in connection with the environment as well as in exercising their own human rights, communities should always be able to exercise their right to participate during an impact assessment (see page 107). The UN Respect, Protect, Remedy Framework also requires businesses to carry out a human rights impact assessment where appropriate. Different impact assessments are carried out differently and different countries, investors and businesses have different requirements as to what should be included. These loosely follow similar stages as the identify, prevent, mitigate, account for and remedy criteria in the UN Guiding Principles on Business and Human Rights. Below is a basic set of stages followed in many African countries:

-
- The diagram shows six stages of impact assessment listed on the left, with three yellow brackets on the right grouping them into three categories. The first bracket groups the first four stages under the label 'Identify'. The second bracket groups the fifth stage under the label 'Prevent, Mitigate, Remedy'. The third bracket groups the sixth stage under the label 'Account for'.
- a) **Project Screening** – Checking whether the project requires an impact assessment.
 - b) **Scoping and Terms of Reference** – Deciding what will be included in the impact assessment.
 - c) **Baseline Studies** – Examining the situation that exists before business activities start.
 - d) **Identification and Assessment of Impacts** – Examining what potential adverse human rights impacts could occur as a result of a business's activities.
 - e) **Impact Mitigation and Management** – Choosing actions to prevent, mitigate and remedy adverse human rights impacts.
 - f) **Monitoring, Evaluation, Communicating and Reporting** – Choosing actions to check and account for how well the business project is identifying, preventing, mitigating and remedying adverse human rights impacts.

Project Screening checks whether the project requires an impact assessment. Business activities likely to require impact assessments are:

- extractive businesses (e.g. oil, gas, mining and quarrying);
- large agriculture and forestry businesses (e.g. logging, plantations, irrigation, animal grazing, plantations, orchards and vineyards);
- infrastructure projects (e.g. roads and bridges);
- power plants (e.g. power plants and transmission cables);
- water-based development businesses (e.g. ports, harbours, shipping, dams and reservoirs);
- urban development (city building) (e.g. large-scale housing development, golf courses, water treatment works, landfills, shopping malls and airports); and
- activities that provide tourism (e.g. lodges, trails, safaris, fly fishing, canoeing, rafting, game-viewing, bird watching, camping, conservation areas, diving and snorkelling).

From this point onwards, it is essential that communities' right to participation is recognised in every stage of the impact assessment.

Scoping and Terms of Reference decides what issues will be included in the impact assessment. The UN Guiding Principles on Business and Human Rights require businesses to look, at a minimum, at the rights in the International Bill of Rights and the eight core ILO standards.

Baseline studies look at how communities that may be potentially affected by the business activities currently live and enjoy their human rights. The impact assessment should determine:

- what freedoms and opportunities communities and community members currently enjoy;
- the communities' and community members' standard of health;
- how the community members are currently employed and how they make a livelihood;
- the communities' and community members' standard of education;
- the local working conditions;
- communities' land use both in practice and in law;
- the public services available for use by the community;
- the natural resources used by the communities;
- the areas communities' identify as culturally or religiously significant;
- the local governance institutions and how they work, including the State's institutions and how the community governs itself;
- the unique position of women in relation to all of the above including women's freedoms and opportunities, health problems that specifically affect women, women's position in education, how women are employed and make a livelihood, women's land use both in practice and in law, public services which women use, including health care provided during maternity, local working conditions including allowances made for maternity and how women's position is recognised in both State and community government;
- the unique position of vulnerable groups, including disabled persons, in relation to all the above including their freedom and opportunities, health problems, education, how they are employed and/or are looked after, their land use in practice and in law, public services they use, any special allowances provided to them and how their position is recognised in both State and community government; and
- anything else that might affect how business activities should be designed to prevent adverse human rights activities including criminal activity and inter-tribal rivalry.

Identification and Assessment of Impacts examines all the potential adverse effects there could be as a result of the project. Some examples are:

- An oil business could cause pollution or oil spills which could affect communities' rights to health, housing and livelihoods.
- A security firm could use disproportionate force which could affect communities' right to life, freedom from cruel, inhuman and degrading treatment and freedom of expression.
- A business which uses water could affect local communities' access to water.
- A mining business could build a mine on land which has cultural or religious meaning to communities.
- A business with supply chains could buy products from a supplier who abuses labour rights.
- A business that runs schools could set a price which is too high for many parents/carers to send their children to.
- A business that relocates communities closer together could lead to inter-community conflict.

Impact Mitigation and Management identifies actions to prevent, mitigate and remedy impacts. Some examples are:

1. An oil business ensures that any oil spills are prevented by making sure that the oil is secured safely. An oil business mitigates the effects of any oil spill by ensuring oil is kept away from areas that could really affect communities such as streams and rivers. An oil business remedies any oil spills by cleaning the oil, restoring the land back to normal and providing remedy, including compensation, to affected communities.
2. A security firm mitigates adverse human rights impacts by training their employees not to use disproportionate force and holding security forces accountable when they do so. A security firm remedies adverse human rights impacts by punishing security force members who commit adverse human rights impacts and providing remedy, including compensation, to affected individuals.
3. A business which uses water prevents adverse human rights impacts by ensuring their use of water does not affect the communities' water supply. It mitigates any effect of a lack of water by helping communities with their water supply, e.g., by providing them water directly.

Monitoring, Evaluation, Communicating and Reporting evaluates how well the impact assessment has managed to identify, prevent, mitigate and remedy adverse human rights impacts. It should communicate this publicly and change the measures in light of lessons learned to better prevent future adverse impacts.

Impact assessments are important because they increase the transparency of the business project, they reduce the risk of States allowing projects that are likely to cause serious human rights abuses and environmental impacts, they inform a business as to how to reduce environmental and human rights harm and they can alter the project to address community concerns raised during consultation.

3.2.2 Host States

Host States are expected to require that environmental impact assessments are carried out for projects that may have a significant impact on the environment under:

- international instruments such as the Rio Declaration on Environment and Development;
- treaties such as the UN Convention on Biological Diversity, the UN Convention on Law of the Sea, the United Nations Framework Convention on Climate Change and the UN Convention on the Law of the Non-Navigational Uses of International Watercourses. These treaties leave a lot of discretion to the State as to how impact assessments should be conducted including the level of consultation required with affected communities and whether human rights issues should be included;
- customary international law which requires that States carry out impact assessments where business projects on their territory may have environmental impacts on another State's territory; and
- international human rights law which requires States to take adequate steps to prevent, investigate, punish and redress human rights abuses, which may include impact assessments.

Most African States have national laws which require that environmental impact assessments are carried out. It is also becoming increasingly common to carry out social, human rights and gender impact assessments and to add human rights concerns to environmental impact assessments in law and policy. Some African States expressly include consultations with affected communities in law and/or policy, but others do not.

3.2.3 Home States

In some cases, home States have exercised extraterritorial jurisdiction over their businesses when they were responsible for large scale environmental damage. An example is below:



UK COURTS AND OIL SPILLS IN THE NIGER DELTA

Bodo is a fishing town in mangroves swamps and channels which are the perfect breeding ground for fish and shellfish. It is a rural coastal settlement consisting of 31,000 people who live in 35 villages. The majority of its inhabitants are subsistence fishermen and farmers. In 2008, Shell (an oil business) was responsible for two oil spills which contaminated the rivers and creeks. There were talks between Shell and communities about payment of compensation during which Shell offered the community 4,000 British pounds in compensation. The community refused this offer.

In 2012, after talks failed, the Bodo community decided to bring their case to the UK's courts. In 2015, after three years in the British courts, Shell agreed to an out-of-court settlement of 55,000,000 British pounds. This is thought to be one of the largest amounts of compensation paid to an entire community following environmental damage.⁶³

3.2.4 Businesses

Under the business responsibility to respect, businesses are required to identify, prevent, mitigate, account for and remedy potential adverse human rights impacts, which includes harm on the environment. Consultation with communities is expressly required under the UN Guiding Principles on Business and Human Rights. Where serious impacts may result from a business project's activities, it will be necessary for businesses to carry out an impact assessment.



- Nora Götzmann, 'Human Rights and Impact Assessment: Conceptual and Practical Considerations in the Private Sector Context' (Danish Institute for Human Rights, 2014). <https://papers.ssrn.com>

3.2.5 International organisations

Many international organisations require impact assessments to be carried out in relation to businesses. The organisations supervising the implementation of environmental law treaties do not allow for communities to bring complaints. However, they may still carry out their own investigations where they believe that States are not implementing the treaty provisions.



UNESCO AND THE REQUIREMENT FOR IMPACT ASSESSMENTS

The Ethiopian government was constructing a dam along the Gilgel Gibe river. The dam would decrease the flow of water into Lake Turkana. After construction had already started, it carried out its own impact assessment which was not made public and did not consult the Kenyan communities that live near Lake Turkana.

Lake Turkana is a World Heritage Site. Ethiopia is a party to the Convention Concerning the Protection of the World Cultural and Natural Heritage. Article 6 of the Convention requires that States do not take steps that could damage a World Heritage Site in another country. The World Heritage Committee of the United Nations Education, Scientific and Cultural Organisation (UNESCO) took the decision that the building of the dam could damage Lake Turkana. It required that the building of the dam be suspended and that the Ethiopian government ensured that an independent impact assessment was carried out before construction could continue. The Ethiopian government did not comply with this decision.⁶⁴

Some human rights organisations have also recognised that impact assessments may be required to prevent human rights violations.



THE AFRICAN COMMISSION AND DAMAGE TO THE ENVIRONMENT

Following the environmental damage that occurred in the case of the Ogoni people (see page 12), the African Commission on Human and Peoples' Rights required that Nigeria pays compensation to restore the environment and that Nigeria ensures that impact assessments are carried out in the future to prevent similar damage. The Nigerian government has adopted some requirements for environmental impact assessments into national law, but it did little to clean the environmental pollution of the Ogoni land or to compensate the communities affected.⁶⁵

3.2.6 Financial institutions

Many International Financial Institutions require impact assessments to be carried out before they invest in projects including the World Bank Group, the African Development Bank and the European Investment Bank. State- and privately-owned financial institutions also have a responsibility to respect human rights, including to identify, prevent, mitigate, and account for adverse human rights impacts caused by businesses and business projects they invest in, which can include ensuring an impact assessment is carried out.



THE WORLD BANK GROUP AND IMPACT ASSESSMENTS

The World Bank invested in the Chad-Cameroon Pipeline (mentioned on page 28). A complaint was taken to the World Bank Inspection Panel arguing that the Bank had not taken sufficient steps to prevent social and environmental impacts. The World Bank Inspection Panel concluded that it had not been compliant with its policies because, amongst other things, the environmental assessment had been carried out too late (once construction of the project had already started) and there was insufficient monitoring of the pipeline. The World Bank then took various measures including the appointment of an Independent Panel of Experts to monitor the rest of the project.⁶⁶

Financial institutions which have signed up the Equator Principles are also required to ensure that impact assessments are carried out in certain types of projects they finance.

3.2.7 International Soft Law Initiatives

The OECD Guidelines for Multinational Enterprises contain a chapter on the Environment which requires businesses to evaluate their potential impacts on the environment, establish measurable objectives as regards their impacts on the environment, adopt measures to pursue these objectives, monitor these measures and verify whether they have been successful.



THE UK NATIONAL CONTACT POINT AND ENVIRONMENTAL IMPACT ASSESSMENTS

SOCO, a British oil business, carried out oil exploration activities in Virunga National Park (a World Heritage Site) in the Democratic Republic of the Congo (DRC). The World Heritage Committee stated that oil exploration and exploitation activities in Virunga are incompatible with the park's World Heritage Site status. According to the World Wide Fund for Nature (WWF), SOCO did not provide any evidence that it has conducted appropriate and systematic human rights due diligence and that it failed to inform the public about the potential environment, health and safety risks and impacts of its activities. It also stated that the community consultations that had been carried out were not meaningful because community members did not feel safe when voicing their concerns. WWF took a complaint to the UK National Contact Point because the United Kingdom was the home State.

The UK National Contact Point hired an external mediator to mediate between the parties. On 11 June 2014, the mediation resulted in an agreement and joint statement by the parties. As part of the statement, SOCO agreed “not to undertake or commission any exploratory or other drilling within Virunga National Park unless UNESCO and the DRC government agree that such activities are not incompatible with its World Heritage status”. SOCO agreed to cease its operations.

SOCO also committed never again to jeopardize the value of any other World Heritage Sites anywhere in the world and to undertake environmental impact assessments and human rights due diligence that complies with ‘international norms and standards and industry best practice, including appropriate levels of community consultation.’

The WWF-SOCO agreement represents the first time a company has agreed to halt operations during NCP-facilitated mediation. Despite the agreement, however, SOCO has yet to relinquish its operating permits.⁶⁷

3.2.8 National Human Rights Institutions

National Human Rights Institutions (NHRIs) can sometimes deal with environmental issues.



THE SOUTH AFRICAN NHRI AND IMPACT ASSESSMENTS

In early 2008 ActionAid, a civil society organisation, documented human rights abuses in the platinum mines of the Limpopo Province in South Africa by the Anglo Platinum company. The South African Human Rights Commission decided to do a full investigation into allegations of community relocations and adverse environmental impacts as well as other human rights concerns. It carried out fact-finding missions, interviews and inspections. Amongst its conclusions, it found that the community was not consulted before the mining license had been granted. It arranged a meeting between the government, business and affected communities. It proposed several recommendations to the State and the business. The government consequently revised its guidance regarding public participation in mine-licensing processes. However, the existing environmental damage has not been effectively addressed.⁶⁸

3.2.9 Multistakeholder and Industry initiatives

Increasingly, businesses have got involved in industry initiatives and multistakeholder initiatives to help prevent and mitigate adverse environmental impacts. Many of these initiatives have both social and environmental standards that they expect their members to comply with.

Examples of industry initiatives with environmental standards are:

- **Ethical Tea Partnership** – an initiative which works with suppliers of tea and provides training on health and safety, safe use of agrochemicals and environmental management.
- **The International Council on Mining and Metals** – an initiative set up by international mining businesses which aims to improve the environmental performance of its members.
- **IPIECA** – an association of international oil and gas businesses which aims to improve environmental performance.

Examples of multistakeholder supply chain initiatives with environmental standards are:

- **Alliance for Water Stewardship** – an initiative made up of businesses and civil society organisations which aims to improve the environmental impacts relating to the use of water.
- **Forest Stewardship Council** – an initiative which is governed by charities, civil society organisations and academic institutions. It aims to improve the environmental, social and economic conditions of communities in forests. It does not certify businesses directly but certifies other certification bodies.
- **Roundtable on Sustainable Palm Oil (RSPO)**, **4C Coffee Association**, **BONSUCRO** and the **Better Cotton Initiative** are multistakeholder initiatives which aim to improve environmental performance in relation to palm oil, coffee, sugar and cotton respectively.

3.3 Displacement/Land Rights

Where communities have moved away or are removed from certain areas of land this is referred to as displacement. Displacement can be both physical or economic:

- **Physical displacement** is when communities are moved away from the land they use so a business can use it (e.g. moving a community to make room for a mine).
- **Economic displacement** is when communities move away from their land themselves because they can no longer use it to maintain their livelihood (e.g. a fishing community leaves a stream because it becomes polluted by a business).

Any potential displacement of communities should be incorporated into an impact assessment (see section 3.2.1). Both the State and the business should ensure that any displacement that occurs does not breach international standards, including that communities are lawfully resettled and that remedy is provided for any harm. Resettlement is where communities are moved from their land but are provided with other land to live on. Voluntary resettlement is where communities have agreed on the terms and conditions for their resettlement, such as compensation and requirements that the land they are moved to must fulfil. Involuntary resettlement is where communities have not consented to be moved from their land to other land but are resettled anyway.



INTERNATIONAL HUMAN RIGHTS LAW RELATING TO INVOLUNTARY RESETTLEMENT

Involuntary resettlement (or forced evictions) is only allowed under international human rights law as a last resort. Several requirements must be met before forced evictions can be carried out:

- Genuine consultation with all those affected (see pages 102-103).
- Adequate and reasonable notice for affected people prior to the eviction.
- Information on the proposed evictions and, where applicable, on the alternative purpose for which the land or housing is to be used, to be made available in reasonable time to all those affected.
- Government officials or their representatives to be present during the evictions.
- Anyone carrying out the eviction to be properly identified.
- Evictions not to take place in particularly bad weather or at night unless the affected people consent.
- Provision of legal remedies.
- Provision, where possible, of legal aid to people who are in need of it to seek redress from the courts.

These protections apply in all cases, whether or not people have a legal right to occupy the land on which they are living. Indigenous peoples can never be relocated without their consent (see page 140).

Involuntary resettlement must be compliant with national law and cannot be carried out with respect to indigenous peoples.

3.3.1 Host States

DID YOU KNOW

Between 2002 and 2012, reported large-scale land deals (for agriculture) involving foreign investors in Africa, covered 56.2 million hectares, an area equivalent to 4.8 percent of Africa's total agricultural area, or the territory of Kenya. This does not include those land deals that were unreported or small-scale.⁶⁹

Often, the entitlements people have to use land are not written into law. For instance, people may live on land, but the State may have no written record of them owning that land. In such cases, where an international business operates, it will not know who is entitled to live on and/or use the land. Where peoples' entitlements are not written into law, businesses are more likely to abuse these peoples' human rights. Guiding Principle 3 of the UN Guiding Principles on Business and Human Rights requires that States should recognise communities' rights to land as part of their duty to protect.





RECOGNITION OF LAND RIGHTS IN MOZAMBIQUE

During a civil war in Mozambique, several million people fled to other parts of the country or fled Mozambique altogether. After the end of the civil war, the government was anxious to resume farming. At that time, the law prescribed that all land belonged to the State. Communities had no rights over the land. The State used this law and provided land for use to British, Portuguese and South African businesses as well as many Mozambican investors. This caused many issues when communities returned to find that their land was being used by someone else.

The government came to realise that there was a need to recognise community land rights and changed the law to recognise communities' customary rules. All customary practices are considered legitimate means of community land management and administration, so long as they do not contravene the constitution. Communities are not required to carry out formal land registration but can rely on the testimony of neighbours and other customary practices to prove their claims to land. Consultations are required before a business is granted a legal license to operate on land used by communities.

However, consultations are often carried out poorly, and the State often still provides land to investors without the permission of communities. The reliance on communities governing their own land with little oversight can sometimes lead to communities themselves violating human rights, such as the rights of women and disabled people, by not recognising their entitlements to land.

Despite these remaining problems, increasing recognition of community rights has helped include community interests into foreign investment decisions, which has generally led to an increased recognition of the rights of communities.⁷⁰

3.3.2

Home States

Home States have exercised extraterritorial jurisdiction over businesses who have been involved in involuntary resettlement in some instances (see below).



UK AID AND INVOLUNTARY RESETTLEMENT IN ETHIOPIA

Between 2010 and 2013, Ethiopia's government leased millions of hectares of land to businesses at reduced prices for farming. It resettled many communities in what it called 'villagization' schemes. Civil society organisations have said that villagization is just an excuse for forced relocation of communities to make way for land investments. The government stresses that the two – land transfers and villagization – are completely unrelated. The view of the planners and implementers of the villagization campaign is to de-skill local people, and re-skill them in forms of 'modern' settled agriculture, farming and livestock rearing. Communities were coerced to join new villages without "free and informed prior consent." Soldiers overseeing relocation have arrested, tortured, killed and raped where people have refused to move. Many community members have not ended up in villages and have fled to refugee camps in Kenya and South Sudan.

The UK's government donated aid to the Ethiopian government's Promotion of Basic Services (PBS) Programme. It has been alleged that the Ethiopian government was using money from this programme on its villagization schemes. In 2014, an Ethiopian sued the UK government in UK courts for failing to take adequate steps to ensure that the aid money was invested properly. In 2015, the UK withdrew its aid from Ethiopia due to human rights violations committed during their partnership.⁷¹

The UN Human Rights Committee has stated that home States should take actions relating to their businesses committing involuntary resettlement abroad (see below).



A GERMAN BUSINESS AND INVOLUNTARY RESETTLEMENT IN UGANDA

In 2001, Ugandan police carried out forced evictions of the villages of Kitemba, Luwunga, Kijunga and Kirymakole in the Mubende District of Uganda to make space for a German business's (Neumann Kaffee Gruppe's) coffee plantations. In 2012, the Global Initiative for Economic, Social and Cultural Rights submitted a report of these violations to the UN Human Rights Committee.

The UN Human Rights Committee published its concluding observations on Germany's realisation of its obligations under the UN International Covenant on Civil and Political Rights. It stated that it welcomed measures taken by Germany to provide remedies against German companies acting abroad allegedly in contravention of relevant human rights standards. However it stated that such remedies may not be sufficient in all cases.

It encouraged to set out clearly the expectation that all business enterprises domiciled in its territory and/or its jurisdiction respect human rights standards in accordance with the Covenant throughout their operations. It also encouraged Germany to take appropriate measures to strengthen the remedies provided to people who have been victims of activities of such German enterprises operating abroad.⁷²

3.3.3 Businesses

Just as with other adverse human rights impacts, businesses should have human rights due diligence processes in place to prevent displacement. This includes consulting affected communities regarding potential relocation, disseminating information about potential relocations and having compensation procedures. It may also involve the participation of civil society organisations. Where businesses resettle community members, they should design a Resettlement Action Plan. A Resettlement Action Plan should contain actions that achieve the following:

1. **Identification of potential adverse human rights impacts:**
 - The area of affected land should be identified as well as the land that people will be resettled to.
 - The community members who will have to be resettled should be documented and registered.
 - A study of adverse effects toward each community member should be carried out including the loss of land (including property on the land), the loss of livelihood (either temporary or permanent) and any other adverse human rights impacts. Examples are potters who use clay deposits in the ground, fishers who use the waters and vendors who sell to customers who live nearby. Cultural property such as burial grounds and places of worship must be included.
 - Affected communities should be consulted regarding the adverse human rights impacts and how to mitigate them as opportunities to improve housing, public infrastructure and services.
2. **Compliance with national law.** The project should comply with national laws on compensation, consultation and land titles. Where national laws require less than adequate compensation or consultation, the business should still provide appropriate compensation and consultation.
3. **Compensation of communities.** The project should compensate communities for all adverse human rights impacts including their loss of land and housing, their livelihoods and any loss of income (either temporary or permanent). This should include land-for-land compensation (see box below).
4. **Provision of resettlement assistance and restoration of community members' livelihood activities.** The project should provide assistance with relocation expenses (moving allowances, transportation, special assistance and health care for vulnerable groups). Where land is not immediately available, it should provide temporary housing and financial support. It should ensure that new land is prepared for resettlement, including the building of permanent housing.
5. **Recognition of communities' right to participation.** A community's right to participation should be realised throughout the whole resettlement process: before, during and after.
6. **Provision of remedy.** The business should have a grievance mechanism which communities can complain to and which provides remedy (see pages 173-175).
7. **Measures set up for monitoring, evaluation and reporting.**

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LAND-FOR-LAND COMPENSATION

Where communities live on the land and are given only money or land that cannot sustain a similar livelihood, this is not sustainable as communities will not be able to provide for themselves in the long term. Hence, it is necessary that compensation to communities include land-for-land compensation which must meet the following four principles:

- New land should be equivalent or superior in the potential to provide a good livelihood than the previous land.
 - New land should be located as close as possible to the previous land.
 - New land should be provided free of any 'transaction costs' such as registration fees, transfer taxes or customary tributes.
 - New land should be prepared (cleared, leveled and made accessible) for livelihoods as similar as possible to that of the previous land. Preferably, the people employed to do this work should be from the affected communities.⁷³
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3.3.4 Financial institutions

Many International Financial Institutions and businesses have policies regarding the resettlement of communities. For instance, the International Finance Corporation's Performance Standards require that impact assessments be carried out in situations where involuntary resettlement may occur and they require businesses to design resettlement action plans.



THE WORLD BANK GROUP AND INVOLUNTARY RESETTLEMENT IN ETHIOPIA

Between 2010 and 2013, the Ethiopian government resettled many communities in what it called 'villagization' schemes. Soldiers overseeing relocation have arrested, tortured, killed and raped where people have refused to move. Many community members did not end up in new villages and fled to refugee camps in Kenya and South Sudan.

The World Bank Group invested in the Ethiopian government's Promotion of Basic Services (PBS) Programme. It has been alleged that the Ethiopian government was using money from this programme on its villagization schemes. In 2014, a complaint was filed with the World Bank Inspection Panel which stated that the bank was not responsible for the involuntary resettlement but that there was a link between the villagization schemes and the PBS. The World Bank Group agreed to measures including the following:

- implementing a new programme to benefit smallholder farmers in Gambella; ensuring that national programmes which aim to improve social services and reduce hunger directly benefit the residents of Gambella;
- improving the development prospects of refugees from Gambella as part of the new Horn of Africa Initiative launched by President Kim in October 2014; and
- additional funding for a Public Financial Management operation which would complement the work done under the PBS.

Inclusive Development International (a civil society organisation) criticised the World Bank Group for not properly dealing with evidence relating to the severity of the human rights abuses.⁷⁴

The Equator Principles mirror the International Finance Corporation's Performance Standards and require member financial institutions to ensure impact assessments and resettlement action plans are carried out, in certain contexts.

3.3.5 International Soft Law Initiatives

In 2012, the Food and Agriculture Organisation of the United Nations published the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security. These Guidelines draw on international and regional human rights instruments and they provide for the responsibilities of States and businesses with respect to land rights.

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VOLUNTARY GUIDELINES ON THE RESPONSIBLE GOVERNANCE OF TENURE

The Voluntary Guidelines state host States should:

- recognise and respect all community members' rights to land, whether their rights to land are formally recorded or not;
- safeguard rights to land against threats and infringements, including forced evictions;
- promote and facilitate the enjoyment of legitimate tenure rights;
- provide access to justice to deal with violations of rights to land;
- prevent land disputes, violent conflicts and corruption; and
- provide access to effective judicial remedies for negative impacts on human rights and rights to land by businesses.

They state home States should:

- assist both host States and international businesses in the prevention of human rights abuses and violations of rights to land; and
- take additional steps to prevent human rights abuses and violations of rights to land where the businesses are owned, controlled or supported by the host State.

They state businesses:

- have a responsibility to respect human rights and rights to land;
 - should act with due diligence to avoid infringing on human rights and rights to land; and
 - should provide for and cooperate in non-judicial grievance mechanisms to provide remedy, including effective operational-level grievance mechanisms (see pages 173-175), where appropriate.
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3.3.6 National Human Rights Institutions



THE KENYAN NATIONAL HUMAN RIGHTS INSTITUTION AND DISPLACEMENT OF COMMUNITIES

The Lamu-Port-South Sudan Ethiopia Transport Corridor (LAPSSET) is a massive business project encompassing development of sea, road and rail transport infrastructure. The construction of the sea port, which began in 2012, is likely to affect about 120,000 families. The Kenya National Commission on Human Rights received many complaints relating to violations of land rights, loss of property and livelihoods, a lack of adequate compensation and consultation. It raised these issues with the government and implemented inspections at LAPSSET. It carried out interviews with different groups including communities, and it carried out assessments of the levels of compensation paid to affected community members. It created a programme of public education and capacity-building seminars for local communities and local businesses.⁷⁵

3.3.7 Multistakeholder and Industry initiatives

Many industry and multistakeholder initiatives have social and/or environmental standards which include policies on the resettlement of communities.



A MULTISTAKEHOLDER INITIATIVE AND A PALM OIL BUSINESS IN CAMEROON

A palm oil business was granted a lease on land by the Cameroon government for the construction of a palm oil plantation, during which many communities were resettled. The palm oil business applied to join a multistakeholder initiative: The Roundtable for Sustainable Palm Oil (the RSPO). The communities took a complaint to the RSPO. The RSPO's Complaints Panel expressed serious concern over the business's compliance with RSPO's procedures, including its procedures on resettlement. It appointed the civil society organisation WWF Cameroon to help find solutions and develop an action plan; it ordered all land clearing work be suspended in the meantime. The palm oil business refused to stop clearing land, and it withdrew its membership application to the RSPO.⁷⁶

Indigenous peoples' have rights to the use of land that stem from their right to self-determination. In particular, the United Nations Declaration on the Rights of Indigenous Peoples describes how indigenous peoples' rights relate to the use of land. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired. States are required to give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

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FREE, PRIOR AND INFORMED CONSENT (FPIC)

The UN Declaration on the Rights of Indigenous Peoples requires business projects on land used by indigenous peoples to have the free, prior and informed consent of indigenous peoples before they can start (article 10). This means consent is freely given without force, intimidation, coercion or pressure from either the State or the business. It must be given prior to the government allocating or approving the land for a business project. It must be informed: all relevant information must be communicated in understandable language and there must be access to the advice of independent experts.

Consent requires that the people involved in the project allow indigenous communities to say 'Yes' or 'No' to the project and at each stage of the project, according to the decision-making process of their choice. Where their rights have been violated, indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent. Unless otherwise freely agreed upon by the peoples concerned, compensation shall be land-for-land with the form of lands, territories and resources equal in quality, size and legal status.

Some civil society organisations, including Oxfam, increasingly advocate for FPIC as a best practice for safeguarding the human rights of all communities, including non-indigenous communities, affected by extractive industry projects. These include, for example, the right to food, development, property, culture and a healthy environment. In Africa, regional institutions, civil society organisations and others have called for FPIC when extractive projects have the potential to impact non-indigenous communities, including the Economic Community of West African States, the African Commission on Human and Peoples' Rights, the Pan-African Parliament and Africa Mining Vision. Some organisations also argue international law requires FPIC processes for all communities whose preservation of cultural resources is threatened, but this is disputed.⁷⁷

3.4 Security Arrangements

Large business projects often have security arrangements. Security can be provided both by businesses (security businesses) and the State (police). Where security arrangements are not designed and implemented properly, this can result in serious human rights abuses.

3.4.1 Host and Home States

States are under an obligation not to violate the right to life (International Covenant on Civil and Political Rights, article 6), not to subject any individual to torture or cruel, inhuman and degrading treatment (ICCPR, article 7) and not to violate the right to liberty and security of person (ICCPR, article 9). State forces should not violate these rights themselves (the obligation to respect) and States should prevent others, including businesses, from abusing these rights (obligation to protect).

State obligation to respect

In carrying out their obligation to respect, law enforcement officials (including the military, police and businesses carrying out law enforcement) are required to respect human rights.

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UN BASIC PRINCIPLES ON THE USE OF FORCE AND FIREARMS BY LAW ENFORCEMENT OFFICIALS

The UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials provides useful guidance on what actions governments must take in relation to the use of force by law enforcement officers:

- Governments shall adopt and implement rules on when police can use force/firearms (Principle 1).
- Governments should equip law enforcement officials with various types of weapons, including weapons that do not kill, with a view to increasingly limit the use of weapons that can kill or cause injury. This includes equipping police with self-defensive equipment such as shields, helmets and bullet-proof vests and vehicles to decrease the need to use weapons of any kind (Principle 2).
- Police shall try to avoid resorting to force as much as possible. They may use force and firearms only if no other option is available and when the use of that force would be proportionate to the seriousness of the offence committed and/or the legitimate objective of the police officer. Any force used should be used in a way as to minimise injury and risk to life. Medical aid should be provided for any injury as soon as possible. Friends of any injured person should be informed as soon as possible (Principles 4 and 5).
- Police officers should report every use of force and firearms to their superiors (Principle 6).

- Arbitrary or abusive use of force by police shall be punished as a criminal offence (Principle 7).
- These principles must be complied with at all times, even during political instability or other public emergencies (Principle 8).
- No force can ever be used against lawful assemblies of civilians including peaceful protest or trade union action (Principle 12).
- If assemblies are peaceful and non-violent, police should restrict their use of force (Principle 13)
- Where assemblies are violent, police should only use weapons if they meet the other rules in the UN Basic Principles including those summarised above (Principle 14).
- Police shall not use force against prisoners, and other persons in detention, except for their own safety, the safety of others or the security of the prison (Principle 15).



INTERNATIONAL HUMAN RIGHTS LAW AND USE OF FORCE

The power of law enforcement officials to use force must be established in law. Laws must be clear on the purposes for which force can be used. Only the very minimum level of force necessary to achieve a legitimate objective (e.g., safety of others) may be used. The level of harm caused cannot be worse than the legitimate objective (e.g., safety of others). Law enforcement officials may only kill if protecting themselves or others from death or serious injury and there is no other option. They cannot kill for other reasons such as, for instance, a criminal escaping detention when there is no reason to believe he or she is a grave threat to the life of another person.

Laws must ensure the accountability of law enforcement officials. They cannot be exempted from crimes. Police should be able to refuse orders when they are unlawful, and they should report on fellow police officers who use force unlawfully. All serious uses of force should be investigated. Effective, prompt, impartial and independent criminal investigations should take place when there is evidence of unlawful use of force.

Operational guidelines should be written and taught to police including:

- how to avoid situations where they would require using force;
- how to persuade, negotiate and prevent situations from escalating; and
- how to use a firearm.

Police should be equipped with a variety of equipment that does not kill.

Police should not use force against peaceful assemblies of civilians regardless of whether those assemblies are lawful or unlawful. Only when there are other compelling reasons – e.g. regarding public safety and security or the prevention of crime – should police consider resorting to the use of force.

The fact that someone is a prisoner and/or convicted criminal does not mean they can be exposed to greater force. The same rules should apply to everyone.

All police should be competent to meet these standards. They should be capable to use equipment and weapons, in terms of fitness and weapon skills. They should have the necessary professional skills in terms of communication, risk assessment and decision making. They should have the mental and psychological strength needed to respond appropriately to the challenging, stressful and often dangerous situations in which they may have to decide whether or not to resort to the use of force.

Superior officers must be held accountable for the actions of their police officers.⁷⁸

State obligation to protect

As well as an obligation to ensure that their own agencies respect human rights, governments also have the obligation to protect against human rights abuses by others, including businesses. This requires that governments prevent, investigate, punish and redress unlawful uses of force by businesses in their territory/jurisdiction. It may also require home States take actions contributing to the realisation of human rights outside of their own territory.

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USE OF FORCE BY POLICE AND STATES' OBLIGATIONS TO PROTECT HUMAN RIGHTS

The Voluntary Principles on Security and Human Rights have provided guidance for how States can assist in ensuring that businesses do no harm in relation to their security affairs. Governments can:

- promote and protect human rights by developing appropriate regulations, policies, programmes and tools;
- provide guidance to businesses on how to implement their responsibility to respect;
- enter into international co-operation with other governments to help improve each other's security sectors through development of well-functioning institutions and laws;
- prevent, investigate, punish and redress human rights abuses committed by third parties within their jurisdiction through policies, legislation, regulations and adjudication, as well as taking action to prevent the same human rights abuses from happening again;
- share information with businesses and local civil society organisations that would help them prevent human rights abuses such as information on any potential security threats;
- consult with businesses about the impacts of their security arrangements on local communities and the risks of potential violence;
- work closely with businesses, communities and civil society organisations to help identify and implement best practices;
- provide public security to businesses in a way which does not violate human rights law;
- where there are contracts between public security and businesses, ensure that human rights requirements are included in the contracts;
- promote and provide adequate and effective training for local prosecuting authorities and the judiciary on international human rights law, international humanitarian law, local and national laws and international law enforcement principles; and
- [in the case of home State governments] help support business impact/risk assessments through, for instance, having their embassies ask the host State's government about security risks.

3.4.2 Businesses

Businesses may directly provide security arrangements (security businesses or security firms). They may also require security arrangements themselves to protect their property from theft or attack. Businesses may therefore directly cause human rights abuses when providing security. They may also contribute to, or be directly linked to, human right abuses when relying on security provided by other businesses or government security forces or when providing services to security businesses/police (e.g. a financial institution providing insurance for a security business). This section will focus on:

- a) businesses directly providing security arrangements;
- b) businesses with security arrangements provided by the government; and
- c) businesses with security arrangements provided by other (security) businesses.

Businesses directly providing security arrangements

Like all businesses, security businesses have a responsibility to respect human rights. They should identify, prevent, mitigate, account for and remedy all adverse human rights impacts they cause or contribute to. They should have a human rights policy, due diligence processes and remediation processes. A multistakeholder initiative has published the International Code of Conduct for Private Security Service Providers which provides guidance to security businesses on how to implement their responsibility to respect.

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INTERNATIONAL CODE OF CONDUCT FOR PRIVATE SECURITY SERVICE PROVIDERS

The International Code of Conduct for Private Security Service Providers puts forward the following rules for security businesses to comply with:

- **Use of force.** Business staff must take reasonable steps to avoid the use of force. If force is used, it must be consistent with national law. In no case shall the use of force be more than what is strictly necessary. It should be proportionate to the threat and appropriate to the situation. Firearms should never be used except in self-defence or defence of others against the threat of death or serious injury.
- **Detention.** Security businesses should not apprehend or detain any persons except in order to defend themselves or others against an imminent threat of violence. In such cases they should be immediately transferred to the State police. Employees will only guard, transport or question detainees if
 - a) the business has been specifically contracted to do so by a State, and
 - b) its employees are trained in the applicable national and international law. Detained persons must be treated humanely and consistently with applicable human rights law or international humanitarian law.

- **Abuse.** Security businesses must never subject anyone to torture or cruel, inhuman and degrading treatment regardless of the circumstances. Staff should not partake in actions including rape, sexual harassment or any other form of sexual abuse or violence. Staff shall never engage with prostitutes. Human trafficking, slavery, child labour and discrimination are also prohibited.
 - **Vetting.** Security businesses must only hire individuals with the required qualifications as defined by the applicable contract, applicable national law and industry standards, as well as the other principles contained in the International Code of Conduct for Private Security Service Providers ('the Code'). At a minimum, this requires that employees provided with weapons:
 - a) are over 18 years old;
 - b) are physically and mentally capable of doing their job;
 - c) have not been convicted of a crime that would indicate that this individual lacks the character to properly meet the requirements in the Code;
 - d) have never been dishonourably discharged;
 - e) have never had other employment or engagement contracts terminated for documented violations of any of the principles contained in this Code; and
 - f) have not got a history of other conduct that, according to an objectively reasonable standard, brings into question their fitness to carry a weapon.
 - **Training.** All employees are trained on applicable international and national law, including international human rights law, international humanitarian law, international criminal law and other relevant criminal law. They should also be trained in the responsible use of weapons.
 - **Weapons.** Weapons should be stored safely with records of when and to whom they were issued.
 - **Incident Reporting.** Any firing of weapons, use of force, damage to equipment, injury, attacks, criminal acts, traffic acts shall be reported and, where relevant, also to the police.
 - **Create a safe and healthy working environment** in which there is no harassment or abuse of workers.
 - **Grievance mechanisms.** All security businesses must have a grievance mechanism for employees or communities to submit complaints.
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Businesses with their security arrangements provided by others

Businesses have a responsibility to investigate, prevent, mitigate and account for adverse human rights impacts caused by government forces or security businesses with which they have a business relationship (as they are directly linked to such adverse human rights impacts). They must also investigate, prevent, mitigate, account for and remedy adverse human rights impacts caused by any government forces or security business which they contributed to. The Voluntary Principles on Security and Human Rights are a multistakeholder initiative standard which provides for what actions a business can take in such situations.



VOLUNTARY PRINCIPLES ON SECURITY AND HUMAN RIGHTS

The Voluntary Principles on Security and Human Rights require member businesses with security arrangements to carry out a risk assessment including identifying security risks, the potential for violence, the human rights records of both government forces and security businesses, the ability of courts to hold those who commit human rights abuses accountable, local conflicts (and what they are caused by) and the potential adverse human rights impacts of the provision of lethal and non-lethal weapons to State or private security forces. In addition, they place specific provisions on how businesses should manage their relationships with government security forces and also security businesses. In relation to businesses who have relationships with a government's security forces, they require member businesses to:

- consult with governments and communities about the effects of their security arrangements on communities;
- ensure that government officials implicated in human rights abuses do not provide security services to them;
- ensure that force is only used when strictly necessary and proportional to the threat;
- ensure that communities' and workers' rights to protest and form a trade union are respected;
- report incidents of violence to the relevant authorities. Where appropriate, they should urge governments to carry out an effective investigation of the incident;
- ensure that authorities are provided with all the relevant evidence of any crimes;
- monitor the use of any equipment they have provided to State security forces (including both lethal and non-lethal weapons) and ensure that they are not used to commit human rights abuses.

In relation to businesses which have their security arrangement provided by security businesses, the Voluntary Principles require member businesses to ensure that:

- private security businesses have relationships which observe their policies, human rights, national law and professional standards;
- private security businesses are able to use firearms appropriately;
- private security businesses meet the standards in the International Code of Conduct for Private Security Service Providers (above) and other best practice;
- all complaints against private security businesses are recorded and investigated, and that the police and courts are informed about these allegations;
- security forces should only be used for defensive purposes;
- private security forces do not hire individuals implicated in human rights abuses;
- private security use force only when strictly necessary;
- rights to protest and form a trade union are always respected;
- where force is used, medical aid is provided to the injured.

In addition, businesses may include human rights provisions in contracts, ensure security businesses hire staff which come from local communities, review the background of staff members and consult with civil society organisations, communities and governments about the reputation of security providers.

3.4.3 Multistakeholder and Industry initiatives

Increasingly, security businesses have got involved in industry initiatives and multi-stakeholder initiatives. Below are two examples of industry initiatives in the security sector.

- **The International Stability Operations Association (ISOA)** – an initiative composed of security businesses, other businesses and one non-governmental organisation from the United States of America. It includes a code of conduct that members should comply with.
- **The British Association of Private Security Companies (BAPSC)** – an initiative composed of security businesses from the United Kingdom. It has a Charter which includes reference to human rights law, ethical operations, labour rights and the use of firearms.

Examples of multistakeholder initiatives are:

- **The International Code of Conduct for Private Security Service Providers (ICoC-PSP)** – an initiative which is governed by States, civil society organisations and businesses which has security businesses as members. The standards are summarized on pages 144-145. The code is enforced through auditing, monitoring and certification, through the assessment of reports and through a grievance mechanism.
- **The Voluntary Principles on Security and Human Rights** – an initiative composed of States, civil society organisations and businesses involved in extractives (e.g. oil and mining) or energy (e.g. dams) which have security arrangements. The Voluntary Principles do not include security businesses directly. The standards are summarized on page 146. The Voluntary Principles are broad and general and have been criticized for not having adequate guidance on how they should be achieved, as well as lacking proper enforcement mechanisms. Businesses which are members must publicly report on their performance in meeting these standards.



THE VOLUNTARY PRINCIPLES ON SECURITY AND HUMAN RIGHTS

Amnesty International helped to formulate the Voluntary Principles initiative when it was established in 2000. However, Amnesty left the initiative in 2013 because of the failure of the initiative to develop strong accountability systems for member companies. Amnesty International believes that the value of the Principles can only be properly realised if they are associated with robust accountability mechanisms.

3.4.4 Financial institutions

International Financial Institutions may have requirements on projects they invest in to prevent security arrangements from leading to human rights abuses.



THE IFC'S PERFORMANCE STANDARDS ON SECURITY ARRANGEMENTS

The International Finance Corporation's Performance Standards require that projects invest in to assess the risks related to their security arrangements. Security arrangements should be guided by proportionality and international practice (including the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials [see pages 141-142] in relation to hiring, rules of conduct, training, equipping, and monitoring security staff. The project will make reasonable inquiries to ensure that those providing security are not implicated in past abuses; will train them adequately in the use of force (and where applicable, firearms), and in appropriate conduct towards workers and communities. Any use of force must be used, except for preventive and defensive purposes in proportion to the nature and extent of the threat. The project will have a grievance mechanism for communities to raise their concerns about the security arrangements and acts of security personnel.

State- and privately-owned financial institutions are required to identify, prevent, mitigate, and account for adverse human rights impacts that result from the security arrangements of projects and actors they finance or invest in (or provide other financial services to) under their responsibility to respect human rights.

3.4.5 National Human Rights Institutions

National Human Rights Institutions have investigated human rights abuses related to security arrangements. See, for instance, the Bumbuna Inquiry in Sierra Leone on page 98.



- Amnesty International Netherlands, 'Use of Force: Guidelines for Implementation of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials' (2015). www.amnestyusa.org
- Voluntary Principles on Security and Human Rights. www.voluntaryprinciples.org
- International Code of Conduct for Private Security Service Providers. <https://icoca.ch>
- IFC's Performance Standards. www.ifc.org

3.5 Armed Conflict

Business activities can also result in armed conflict, or can contribute to existing armed conflict. Businesses can be complicit in armed conflict through providing help to State forces or armed groups during an existing conflict. Private security businesses may also become directly involved in conflicts. Conflict can lead to serious human rights violations such as torture, unlawful killings and forced labour.

3.5.1 Host States

Host states have obligations to respect, protect and fulfil human rights, even in cases of armed conflict. States may be able to temporarily lower the requirements of their human rights obligations in exceptional situations, such as when they are in an emergency situation which affects the whole population and constitutes a threat to the existence of the State. The process by which a State lowers the requirements of its human rights obligations in exceptional situations such as armed conflict is called derogation. Even in such situations, however, many human rights obligations still exist in full force including the right not to be tortured and the right not to be discriminated against. In times of armed conflict, States also have to comply with their obligations under international humanitarian law (the law of armed conflict).

3.5.2 Home States

Where the host State's government is absent because of conflict, it may not be able to realise human rights in practice although it must still take every act it can to do so. In situations of armed conflict, there is an even stronger need for other States (home States in particular) to take action to ensure that businesses respect human rights. The UN Special Representative on Business and Human Rights identified several ways in which a home State can carry out its duty to protect with respect to businesses operating in conflict-affected host States including actions to prevent, investigate, punish and redress human rights abuses. Actions a State may take to prevent human rights abuses in conflict-affected areas are to:

- require businesses to have a human rights/conflict sensitivity policy;
- provide information of the human rights situations in conflict-affected areas;
- provide information on a business's legal obligations and provide advice to businesses on how to operate in conflict affected areas;
- create heightened due diligence standards in conflict situations;
- only provide loans, contracts and other transactions to businesses who have good human rights practices; and
- prevent the import of pillaged goods into their territory from areas affected by conflict.

Actions a State may take to investigate human rights abuses include carrying out an effective investigation of human rights abuses. This can be done by the State's embassy, an inquiry in Parliament, a special mission, an Ombudsman or a National Contact Point.

Actions a State may take to punish and redress human rights abuses are to:

- exclude the business from loans, contracts or other transactions and/or withdraw existing support;
- consider trying businesses in their own courts for more serious human rights abuses, and managers and directors can be tried where they have committed international crimes;
- place sanctions on an individual or a business involved in serious human rights abuses;
- try businesses involved in corruption with the host State or armed groups; and
- provide conciliation and mediation services between the business and communities.

States should work together to ensure that businesses in conflict situations do not escape oversight by carrying out their actions in multiple States.

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UNITED STATES DODD FRANK ACT

Section 1502 of the United States Dodd-Frank Act requires, among other things, that US businesses undertake due diligence to check if certain minerals in their products – tin, tungsten, tantalum and gold – are funding armed groups or fuelling human rights abuses in the Democratic Republic of the Congo (DRC) and its neighbouring countries. These businesses must publicly disclose their due diligence efforts to the United States Securities and Exchange Commission in annual reports. These reports allow businesses to demonstrate that they are sourcing the minerals in their products responsibly and not indirectly profiting from the harm that armed groups inflict on civilians in the DRC.

Together with other efforts, Section 1502 has helped create an unprecedented opportunity to reform eastern Congo's mineral trade. It is changing the way that supply chains are understood and, ultimately, how they function. Section 1502 has also helped spark similar legal reform and standard setting efforts in African countries, including the DRC itself, Europe and China.

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BUSINESSES REPORTING UNDER THE DODD FRANK ACT

Global Witness and Amnesty International analysed one hundred reports filed by businesses under the Dodd-Frank Act. The findings show that some businesses are making real progress towards sourcing conflict free minerals. In just the first year of reporting, around twenty percent of surveyed companies met the minimum requirements of the law.

However, the findings also show that almost eighty percent of companies in the sample, failed to meet the minimum requirements of the law. Failure to do supply chain checks damages attempts to clean up the conflict minerals trade. Very few of the reports contained detailed information about the steps businesses had taken to source minerals responsibly. This suggests that many of these businesses made little effort to understand their supply chains or to take steps to ensure that they are not contributing to harm.⁷⁹



A CANADIAN BUSINESS IN THE DEMOCRATIC REPUBLIC OF THE CONGO (DRC)

In 2004, a Canadian international business, Anvil Mining, was alleged to have contributed to serious human rights abuses in the town of Kilwa in the DRC, including rape and murder. It provided the army with trucks, food, housing and other logistical support. The community filed a case with the Canadian courts who rejected the case because the events took place outside of Canada where it did not have jurisdiction.⁸⁰

3.5.3 Businesses

Where businesses act in areas affected by conflict or widespread violence it is likely that human rights abuses may create conflict or increase existing conflict which will lead to adverse human rights impacts. When a business becomes involved in an armed conflict, it still has a responsibility to respect human rights: to investigate, prevent, mitigate, account for and remedy adverse human rights impacts they cause or contribute to. Additionally, international humanitarian law applies to businesses in situations of armed conflict. International humanitarian law is a body of rules that protect persons who are not or are no longer participating in the conflict and restricts what acts may be used during armed conflict. Below are five main situations where a business can violate international humanitarian law:

1. When a business uses force in an armed conflict.
2. When a business uses land during an armed conflict.
3. When a business is complicit in a conflict through its connection to armed forces.
4. When a business purchases conflict resources.
5. When a business is involved in the trade of weapons.

Businesses will also fail to meet their responsibility to respect human rights if they take insufficient steps to prevent adverse human rights impacts committed by other entities they are directly linked to. This means ensuring that businesses must not maintain relationships with States, armed groups or anyone else who is committing serious human rights abuses during armed conflict.

Businesses using force in an armed conflict

Ordinarily businesses and their security personnel must comply with national law and respect human rights which requires them to only use force when strictly necessary and proportional to the threat faced (see page 141-142). Where businesses operate in situations of armed conflict then the rules of international humanitarian law apply. In such cases, businesses may use lethal force provided it does not break the rules of international humanitarian law, including that people who surrender should not be killed, the wounded must be given medical treatment and persons deprived of their liberty must be treated humanely. Torture, inhuman treatment, rape and executions without fair trial are prohibited in all circumstances.

Businesses using land in conflict affected regions

To see how a business's responsibility to respect relates to their use of land see section 3.3. Additionally, in *international* armed conflict (where two or more States are in conflict with each other) armed forces (whether operating for or against the State) are not allowed to forcibly relocate communities except where imperative military reasons demand this. Land taken without consent of the owners during an armed conflict could also constitute an act of pillage, even if it would ordinarily meet international human rights law standards on forced relocation. Pillage is the unlawful taking of private property for personal or private use. This includes exchanges based on threats, intimidation, pressure, or a position of power derived from the surrounding armed conflict.

Complicity in human rights violations committed by the State

In international law, complicity normally requires that a business is 'knowingly providing practical assistance or encouragement that has a substantial effect on the commission of a crime' (Guiding Principle 17 Commentary). Where a business knowingly works with armed forces (whether the State's or rebel armed forces) that violate the rules of international humanitarian law, the business will be in violation of international humanitarian law. This is regardless of whether the business intended the violations to occur or whether the violations were committed on their behalf.

Manufacture and trade of weapons

It is prohibited to knowingly sell weapons to armed forces (whether operating for or against the State) that are committing violations of international humanitarian law. There are certain weapons which are prohibited in all circumstances such as chemical weapons and landmines.

A Business and Conflict Resources

Conflict resources are natural resources such as crops, minerals, logs and rubber which are either obtained through human rights abuses or violations of international humanitarian law or the money used to buy them contributes to serious human rights abuses or violations of international humanitarian law. Under international humani-

tarian law, businesses which operate in conflict zones must ensure that they are not acquiring resources or property without the freely given consent of the owner. They may otherwise be accused of taking part in pillage.

Increasingly, national and international courts have rules to try individuals for breaches of international humanitarian law regardless of where those breaches took place. The International Criminal Court may try individuals for war crimes. Individuals within the business can be tried for their role in breaching international humanitarian law. Some States have rules to hold businesses liable for violations of international humanitarian law in civil law. Additionally, businesses using lethal force may also breach national law (either criminal or civil).



- International Committee of the Red Cross, 'Business and International Humanitarian Law: an introduction to the rights and obligations of business enterprises under international humanitarian law' (2006). www.icrc.org

Supply chains

In addition to the rules of international humanitarian law, businesses should exercise their responsibility to respect with relation to situations of armed conflict. A business is always required to investigate, prevent, mitigate and account for adverse human rights impacts throughout its supply chain, which includes ensuring that its suppliers do not work with conflict resources. The OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High Risk Areas provide guidance on how businesses can avoid purchasing minerals which have been mined in areas affected by conflict. They can also be applied to other conflict resources which are not minerals.

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OECD DUE DILIGENCE GUIDANCE AND CONFLICT MINERALS

The OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas aims to help businesses respect human rights and avoid contributing to conflict through their supply chains. It puts forward five steps that businesses should take:

1. Establish management systems including a policy, due diligence across the supply chain, special provisions in contracts with suppliers and establishing a complaints mechanism.
2. Identify and assess risks of the purchase of conflict minerals throughout the supply chain.
3. Take measures to prevent and mitigate the purchase of conflict minerals, account for measures taken and check the performance of such measures.
4. Have an independent party audit the process. Auditing means that a supplier will be regularly subjected to inspections to ensure they are not trading in conflict minerals.
5. Publicly report on all of the above processes.



OECD DUE DILIGENCE GUIDANCE

Amnesty International recommends that home States establish laws requiring their businesses to investigate and report publicly on their Supply Chains in accordance with international standards such as the OECD Due Diligence Guidance for Responsible supply chains of Minerals from Conflict-Affected and High-Risk Areas and the UN Guiding Principles on Business and Human Rights. Any laws should be supported by criminal sanctions.⁸¹



- OECD Due Diligence Guidance for Responsible supply chains of Minerals from Conflict-Affected and High-Risk Areas. www.oecd.org



MINERAL TRADERS IN THE DEMOCRATIC REPUBLIC OF THE CONGO AND SUPPLY CHAINS

In the North and South Kivu provinces understanding of, and support of, due diligence is growing amongst businesses. This is partially as a result of an increased awareness amongst traders of how their actions can benefit armed groups. By carrying out due diligence, they are better able to decrease the income of those groups that commit human rights abuses and threaten the security of the country. In North Kivu, *comptoirs* and *negociants* (traders) have gained a more detailed understanding of the OECD due diligence standards. However, not all traders are willing to commit to human rights due diligence practices.

Due diligence should be a fairly straightforward exercise for these businesses. The supply chain between the mine site and the trader is short; *comptoirs* and *negociants* are often only one or two steps along the supply chain from the point at which armed group involvement is likely to take place. Local traders also tend to be familiar with transport routes and the other traders involved.⁸²

3.5.4 Financial institutions

Financial institutions should ensure that they do not fund conflict. Where a privately-owned or State-owned financial institution is in a relationship with another actor which is committing severe human rights abuses/violations, it should terminate its relationship with that actor (Commentary to Principle 19 of the UN Guiding Principles on Business and Human Rights).



FINANCING HUMAN RIGHTS ABUSES DURING ARMED CONFLICT

Regardless of which bodies of law apply, businesses have a responsibility to investigate, prevent, mitigate, account for and remedy all adverse human rights impacts. Both banks (as corporations) and their managers and employees (as individuals) can potentially be held liable if they provide the opportunity and the means, through financing, for the commission of serious human rights violations and crimes under international law. Financing is not a neutral activity; corporate liability can be engaged in cases of assisting and aiding the perpetration of human rights violations. Knowledge of the final destination and use of the means which are provided is a sufficient ground for criminal liability.⁸³

3.5.5 Multistakeholder and Industry initiatives

Many of the industry/multistakeholder initiatives that look at labour standards in supply chains also have specific articles on conflict minerals or conflict resources. One particularly relevant multistakeholder initiative in the field of conflict minerals is the Kimberly Process.

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KIMBERLY PROCESS

The Kimberly Process is open to all countries that are willing and able to implement its requirements. The Kimberly Process has 81 State members. Its members account for approximately 99.8 percent of the global production of rough diamonds. In addition, the World Diamond Council, representing the international diamond industry, and civil society organisations, such as Partnership-Africa Canada, participate in the Kimberly Process as non-members.

The Kimberly Process Certification Scheme imposes requirements on its members to enable them to certify shipments of rough diamonds as 'conflict-free' and prevent conflict diamonds from entering legitimate trade. Participating States must meet 'minimum requirements' and must put in place national legislation and institutions, export, import and internal controls and also commit to transparency and the exchange of information. Participants can only legally trade with other participants who have also met the minimum requirements of the scheme, and international shipments of rough diamonds must be accompanied by a Kimberly Process certificate stating they are conflict-free.



KIMBERLY PROCESS

The Kimberley Process defines conflict diamonds as ‘diamonds used by rebel movements or their allies to finance conflict aimed at undermining legitimate governments’. The Kimberley Process does not cover diamonds mined or traded in circumstances involving human rights abuses or diamonds that have financed abusive government forces. It does not require businesses involved at any point in the global trade of rough diamonds to carry out supply chain due diligence. The Kimberley’s State-based, certification scheme in fact releases businesses of any responsibility to investigate their own supply chains for human rights abuses or financing of armed groups. This means that human rights abuses can continue undetected.⁸⁴

Other examples of initiatives relating to conflict minerals include:

- The World Diamond Council aims to ensure ‘conflict free’ diamonds. It participates in the Kimberly Process, a collection of States that aim to make diamonds conflict free.
- The Responsible Jewelry Council aims to ensure that diamonds and platinum in its supply chain are conflict free.
- The Conflict-Free Tin Initiative aims to ensure tin is conflict free.
- The Conflict-Free Sourcing Initiative aims to ensure business’s supply chains are conflict free.
- The Public-Private Alliance for Responsible Minerals Trade is a multistakeholder initiative that aims to eliminate conflict minerals from supply chains in the Democratic Republic of the Congo and the Great Lakes Region.

3.5.6 International organisations

In times of serious armed conflict, the UN Security Council may take a role in promoting peace and security measures. The Security Council is an International organisation with fifteen Member States: five permanent Member States (United States of America, China, United Kingdom, France and Russia) and ten temporary Member States appointed from different regions across the world. All 193 Member States of the UN (which is almost every State in the world) are required to comply with the decisions of the UN Security Council.

The UN Security Council determines whether there is a threat to the peace of a particular State. If it decides there is, it can call on relevant States to settle the dispute peacefully. Where issues cannot be resolved peacefully, it can impose sanctions or even authorise the use of force to restore international peace and security. A sanction is an action that is taken to force a State to obey international laws: for instance, limiting or stopping trade with that State. Sanctions may include banning the trade of weapons to States where warfare is carried out. Sanctions can also be placed on individual businesses and individuals who exacerbate conflict despite sanctions.

A couple of examples are:

- Arms embargo in relation to the Democratic Republic of the Congo (DRC) – The embargo covers arms supplies and other military assistance to armed groups (both Congolese and foreign) operating in North and South Kivu and Ituri in the eastern DRC. It has been in force from 2003 to the time of writing.
- Arms and conflict resources embargo in relation to Liberia – The embargoes have covered arms supplies, rough diamonds and timber for different periods from 1992 to 2016.

United Nations sanctions are enforced by UN States. Other International Organisations may also pass sanctions including the European Union, the African Union and regional African organisations such as ECOWAS, which require their Member States not to engage in forms of trade with particular States or individuals. Individual States may also pass sanctions.



A BUSINESS'S SALE OF ARMoured CARRIERS TO LIBYA

The UN Security Council passed an arms embargo against Libya. Any weapons sold to Libya were required to have the permission of the UN Sanctions Committee. A UN Panel investigated illegal transfers of weaponry to Libya. It found that the Streit Group, a Canadian-owned international business based in the United Arab Emirates (UAE), sold armoured carriers to Libya without permission. The Streit Group were not held accountable by the Canadian government who stated that the business was based in the United Arab Emirates. The UAE did not hold the Streit Group accountable for violations of international sanctions. The US government has fined the Streit Group for selling weapons to other States in violation to US law.⁸⁵

3.6 Corruption

Corruption is likely to lead to human rights abuses because corruption promotes the personal interests of government officials over public interests, including the realisation of human rights.

3.6.1 Host States

There is international law specific to corruption. Two key examples of international treaties on corruption are the African Union Convention on Preventing and Combatting Corruption and the United Nations Convention Against Corruption. Some short summaries of the key elements are below.

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AFRICAN UNION CONVENTION ON PREVENTING AND COMBATTING CORRUPTION

States must pass laws to prevent and criminalise the acceptance of, or offering of, bribes (directly or indirectly) in an exchange for an act or omission in the exercise of public functions, regardless of who offers the bribe, who accepts the bribe and who benefits from the bribe. A bribe may include money, goods, services, favours, promises or some other form of advantage.

States must pass laws to prevent and criminalise illicit enrichment (where someone has received something beneficial, money or status, but cannot provide true reasons for why they have received something beneficial).

States are also required to adopt laws to strengthen internal accounting and auditing in relation to the tax income, public spending and procedures for hiring businesses to carry out contracts.

States should combat corruption amongst businesses and to prevent businesses from paying bribes to win bids over contracts.

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UNITED NATIONS CONVENTION AGAINST CORRUPTION

Every State should adopt effective measures to establish the liability of businesses (criminal, civil or administrative) for the crimes of bribery, embezzlement, abuse of public functions, illicit enrichment and corruption.

Every State's government bodies must be transparent, including with regard to their organisation, functioning and decision-making processes, allowing the general public access to all relevant documents.

States should combat corruption amongst businesses and prevent businesses from paying bribes to win bids over contracts.

The offering of, or receiving of, bribes should be a criminal offence and this should be enforced. This includes illicit enrichment, where a person has required assets but has no explanation of why he or she received them. Laws regarding bribes paid by businesses to governments are often more complicated as a business can arrange transactions in such a way that it is not clear which individual paid the bribe. In many African countries, there are concise laws against people offering and accepting bribes, but there is less clarity over what law applies in respect of businesses offering and accepting bribes. Many States that refer to businesses as legal persons require the person offering the bribe to be in a higher position of management, but this lends itself to abuse by businesses who offer bribes in different ways. National law should cover all forms of corruption.



PRIVATE USE PERMITS IN LIBERIA

Most of Liberia's rural communities are dependent on its forests for food, energy and other basic needs. In Liberia, community-owned land has been subject to Community Rights Law. Community Rights Law has various restrictions on the capacity for government officials to sell community-owned land to businesses. Many government officials began to issue private use permits (legal licenses) for businesses to log on community-owned land without the meaningful participation of the community and in breach of various legal protections. In some cases, the terms of the private use permits would have very negative impacts on communities' access to farming land, food and water supply. Following an enquiry, the government cancelled these permits and has placed criminal charges on eight government officials involved.⁸⁶

3.6.2 Home States

Home States can pass laws preventing their businesses from engaging in corruption abroad. Examples of extraterritorial legislation are the US Foreign Corrupt Practices Act and the UK Bribery Act.



UNITED STATES FOREIGN CORRUPT PRACTICES ACT

The anti-bribery provisions of the Foreign Corrupt Practices Act make it unlawful for a US person or business (and, in some situations, foreign businesses trading in the US) to make payments to foreign government officials for the purpose of doing business in that country, wherever those bribes take place.



A JAPANESE BUSINESS BRIBING NIGERIAN GOVERNMENT OFFICIALS

Marubeni, a Japanese business, worked to represent a Joint Venture of four businesses in negotiations with the Nigerian government for a legal license to extract natural gas on Bonny Island. In order to get the legal license, Marubeni bribed Nigerian high level and low level government officials in relation to contracts which were worth more than six billion US dollars. These bribes took place over more than ten years.

The US Justice Department investigated and charged Marubeni under the Foreign Corrupt Practices Act with help from investigations by *France, Italy, Switzerland* and the *United Kingdom*. In 2012, Marubeni agreed to pay a 54.6 million US dollars criminal penalty to the US government to resolve charges related to its bribery of Nigerian government officials.⁸⁷

3.6.3 Businesses

Businesses must themselves not pay money or other benefits in such a way as to solicit business deals for themselves. They must carry out due diligence to ensure that agents they hire and partners with whom they have business relationships are not involved in bribery or other forms of corruption.

Money paid by businesses in taxation, royalties and/or fees to the government is often not publicly available. This increases the risk that the money will be misused by the government. There are increased calls to ensure there is transparency in the transactions between businesses and governments.

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PUBLISH WHAT YOU PAY

Publish What You Pay is an organisation of civil society organisations who work to see extractive businesses publish more information about payments they make to governments where they operate – for instance how much royalty tax they paid for a mining project.

They seek to do this by monitoring legal developments where they do not currently exist or are not yet implemented and by participating in the improvement of existing rules in countries where extractive companies are listed or registered; currently most of these countries are in the Global North.

3.6.4 Financial institutions

Most financial institutions (including International Financial Institutions and State- and privately-owned financial institutions) have provisions on corruption, as well as internal departments that investigate instances of corruption and mechanisms by which corruption may be reported.

3.6.5 Multistakeholder and Industry initiatives

Unlike the multistakeholder and industry initiatives in previous sections, which focus on member businesses working towards compliance with human rights, environmental and social responsibility norms, the below multistakeholder initiatives target governments to ensure they operate in a transparent and accountable manner.

The **Extractive Industries Transparency Initiative (EITI)** requires member States' governments to publish basic information on the payments they have received from extractive sector companies. Extractive sector companies operating within these countries are also required to publish records of what they pay to businesses. By ensuring that there is transparency over the money that governments receive, the EITI hopes to improve the public's understanding of how their governments use the relevant revenue, thereby improving public debate and improving how governments use their budget. The EITI is run at the international level by a multistakeholder board, including representatives from government, civil society organisations and businesses. At the national level, it has multistakeholder groups made up of representatives from government, civil society organisations and businesses.



EXTRACTIVE INDUSTRIES TRANSPARENCY INITIATIVE

The EITI aims to increase transparency over the money that governments receive. It hopes to improve the public's understanding of how their governments use the relevant revenue, thereby improving public debate and improving how governments use their budget. This does not mean that the governments actually improve how they invest in public services. Nigeria's review of its first ten years reporting of the oil sector showed that it had received nine billion US dollars more in 2008 than would have been the case before it reported to the EITI. At the same time, between 2004 and 2010, absolute poverty in Nigeria rose by six percent to more than sixty percent of the population.⁸⁸

The **Construction Sector Transparency Initiative (CSTI)** requires governments to publish basic information on payments received on construction projects. Unlike with the Extractive Industries Transparency Initiative, governments have discretion as to which construction projects they publish information on. At the international level, board members are made up of representatives from the government, civil society organisations and businesses. At the national level, the multistakeholder group is also made up of representatives from government, civil society organisations and businesses.

The **Open Government Partnership (OGP)** aims to improve governance by governments and civil society organisations agreeing on national action plans to improve five key areas: 1) public services, 2) public integrity, 3) management of public resources, 4) creating safer communities and 5) corporate accountability. Its international steering committee is composed of eleven civil society representatives and eleven government representatives.

The **Global Initiative for Fiscal Transparency (GIFT)** aims to promote international standards for financial transparency and public participation in how governments spend money. GIFT has four primary activities: 1) developing and promoting global financial transparency and public participation norms, 2) knowledge creation, 3) facilitating peer learning and 4) exploring open government technology. GIFT is composed of some governments, International Financial Institutions, the OECD and some NGOs. Governments are not 'members'. Instead GIFT offers advice to governments which are interested.

The **Open Contracting Partnership's** goal is to promote transparency and accountability in government contracts with businesses in general. At the international level, OCP has an advisory board comprised of representatives of government, private sector, local and international non-governmental organisations and think tanks. Its arrangements vary at the national level.

3.7 Access to remedy

For rights to have meaning, effective remedies must be available. The right to an effective remedy lies at the centre of international human rights law (Universal Declaration of Human Rights, article 8, International Covenant on Civil and Political Rights, article 2(3), Committee on Economic Social and Cultural Rights General Comments 3, 12 and 14).

The UN Guiding Principles on Business and Human Rights Foundational Principle 25 reaffirms that everyone has a right to effective judicial remedy for human rights harms committed by businesses, and it also describes other non-judicial grievance mechanisms that may complement (but not replace) courts as a means of remedy.

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JUDICIAL MECHANISMS V. NON-JUDICIAL MECHANISMS

- » A judicial mechanism is just another term for a court. A judicial mechanism is an institution which enforces law, and provides remedy when actors (including States, businesses and individuals) commit acts which are against the law.
- « A non-judicial mechanism is any body that provides remedy which is not a court. These remedies may be based on the law or on a different standard such as a human rights code.

In order for human rights to be effective, a victim must have access to a procedure, e.g., a court, which is capable of ending the violation and repairing any harm done. This process must be affordable and should not take an excessive period of time. The remedy must ‘make good’ any human rights harms that have occurred. A human rights harm is anything that decreases a community’s or individual’s enjoyment of their human rights.

Remedies include apologies, restitution, rehabilitation, financial or non-financial compensation and punitive sanctions (whether criminal or administrative, such as fines), as well as the prevention of harm through, for example, injunctions (orders to stop a particular activity made by a court) or guarantees of non-repetition (guarantees made by a business that the particular activity will end and will not reoccur). This is stated in Guiding Principle 25 of the UN Guiding Principles on Business and Human Rights. Procedures for the provision of remedy should be impartial, protected from corruption and free from political or other attempts to influence the outcome. In different contexts, the importance of these different categories may vary. Also, in practice, they may overlap. A more detailed description is below.

Apologies require the wrongdoer confess that they were in the wrong. An apology should be a sincere statement of regret, responsibility and remedy and show understanding of the level of harm caused. The apologise should accept they are responsible, should make personal guarantees of non-repetition and remedy the harm caused.

Restitution requires that victims of human rights abuse are put in the same position as they were before the human rights abuse occurred. For instance, where the business has taken land from communities, this will require that they be able to return, in addition to compensating them for any loss of livelihood caused by temporarily being forced from their land (e.g. travel costs, loss of earnings, dead crops and livestock). Where restitution is impossible, such as where land is no longer liveable due to construction efforts or where a person is dead following an unlawful killing, then efforts should be made as far as possible to recreate the victim's position before the human rights abuse. For instance, the family of a dead parent should be paid adequate compensation for the security the parent would have provided them with, as well as compensation for the loss of the parent (see compensation below). Those who have been removed from land should be afforded similar land upon which to maintain the same or a better livelihood.

Rehabilitation, like restitution, requires that victims of human rights abuse are put in the same position as they were before the human rights abuse occurred. Unlike restitution, it does not look at the material position of the parties (e.g. their wealth, access to food, employment), but at their overall well-being. Rehabilitation will sometimes require medical services, where someone has been physically or mentally injured; psychological services, where someone has suffered distress; legal services, where someone has lost legal acknowledgment of their rights; and social services, where someone has suffered damage socially such as to their relationships or reputation.

Financial and non-financial compensation looks at the harm caused by a human rights abuse and ensures that appropriate remedy is provided for wrongs suffered. For instance, where a community has been removed from their land, this may result in a variety of injuries even where they are subsequently returned. This may include loss of livelihood while they were away, but it may also include damage to community relations and harm caused to families due to the overall disturbance to their lives. This compensation may be monetary, or may be an alternative form of remedy that victims of human rights abuse would prefer.

Punitive sanctions require that the wrongdoer is punished for the human rights abuse. This may be administrative sanctions (fines) or criminal sanctions (imprisonment). This may be fines against a business, the dismissal of an employee who commits a human rights abuse or the criminal prosecution of business employees and leaders. At a minimum, punitive sanctions require that the wrongdoer should not be better off having caused the human rights abuse than if they had respected human rights. For instance, if a business illegally, without consultation or without respect for human

rights, evicts a community from land that the business then uses for mining, the sanction should be punitive enough that the business does not profit from the human rights abuses that provided it with access to the land (e.g. through imprisonment of relevant business leaders or by imposing large fines).

Prevention of future harm/Guarantees of non-repetition requires that no further human rights abuses take place. For instance, where State police respond violently to a peaceful assembly of a trade union then, in addition to apologies, restitution, rehabilitation, compensation and sanctions, the State should provide police training courses on how to police and to educate them on how to respect, protect and help fulfil human rights in future operations. Prevention of future harm is an essential part of both remedy and a business's responsibility to carry out due diligence.

An example of these categories of remedy at work in practice would be where workers are injured at work because they did not have access to the right safety equipment (e.g., a hard hat). The fact that the accident was the company's fault should be recognised, e.g. in a court judgement and/or in an apology by the company (apologies). They should be paid lost wages for time they were not able to work and allowed to return to work if and when they are able to do so (restitution). They should also be offered access to medical services to help overcome their injury both physically and psychologically (rehabilitation). They should receive compensation for their pain and suffering (compensation). The company or employer could be fined if it behaved contrary to the law (punitive sanctions). The company should alter its policies and practices to ensure all employees engaging in dangerous work have access to and wear hard hats in the future.

3.7.1 Host States

States have an obligation to ensure access to effective remedy for harms caused by businesses under their duty to protect against human rights abuses. They also have an obligation to ensure there is the right to effective remedy for human rights violations under international human rights treaties and customary international law.

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INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS ARTICLE 2(3) – RIGHT TO REMEDY

'Each State party to the present Covenant undertakes:

- a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

- b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
 - c) To ensure that the competent authorities shall enforce such remedies when granted.’⁸⁹
-

Effective policies, laws and regulation

Remedy should take place within an overall structure of effective policies, legislation, regulation and adjudication. The most common form of law that can be used to ensure that businesses respect human rights is the law against ‘civil wrongs’, otherwise known as tort law or delict law. Civil wrongs include where one individual has intentionally done harm to another person or where one individual has accidentally done harm to another person but is still responsible because he or she did not take reasonable steps to prevent the possibility of the harm. Harms caused by businesses, such as oil spills, environmental damage and physical assault, should be covered by law regarding civil wrongs and should allow persons to claim compensation. Often, law requires the victim to prove that the business caused the harm, and that the harm was as a result of a business’s negligence (failure to be careful). This can be very difficult to do, as communities may not be able to gather evidence of a business’s role in an oil spill, for instance because they do not have access to the area where it occurred. Laws should be modified to ensure a community’s access to justice.



For instance, a community's stream is polluted by a nearby oil field that a business is drilling on. The community has documented the effects of the oil on their stream and livestock, but they cannot access evidence as to why the oil spill occurred. The business claims that it was not its fault: that the oil was spilt because the spills were caused by criminals sabotaging its oil pipelines. The community suspects that the oil business caused the spill itself. If the national law requires the community to prove that the oil spill was caused by the business, they are unlikely to be successful in court. The State could make the law more effective by:

- requiring businesses to prove that they did *not* cause the human rights abuse (in this case, proving that the oil spills were caused by criminals). Otherwise, it is assumed that they are responsible and must pay affected communities compensation and clean up the oil spill, or
- taking the position that the business is responsible for whatever happens with the oil because the oil is under their control. The very fact that the oil has spilt into community's land, means the business is responsible and must pay affected communities compensation and clean up the oil spill. This is called 'strict liability'.

The State could also help ensure these laws are enforced properly through ensuring independent investigations and ensuring that the court that hears these claims is independent, impartial and fair.

Courts

The most important institutions for the provision of remedy are courts. Judicial remedy is remedy enforced by a court or tribunal and is always provided by the State. It relies on an independent judge (and in some cases a jury) looking at the evidence to determine what events took place in a dispute, determining whether a person or business violated the law, and, if so, providing remedy to put right the violation. It can be provided by national courts in the host State, where the human rights abuses occur, or in the home State, where the business is based.

Potential outcomes of judicial remedy include the ability to award compensation to victims of human rights abuses for the purposes of restitution, rehabilitation and/or compensation. Courts may also offer restitution by recognising a victim's legal rights (such as their property rights over the land they have been evicted from). Courts may provide injunctions against businesses which are orders that prevent future wrongdoing (guarantees of non-repetition). They may also order fines against businesses, and may prosecute them (punitive sanctions). The host State court should be the most appropriate court to provide remedy; it ought to be able to investigate all cases of wrongdoing under national law and provide appropriate remedy. Guiding Principle 26 of the UN Guiding Principles on Business and Human Rights provides information on what States can do to ensure their courts are effective.

GUIDING PRINCIPLE 26 ON JUDICIAL MECHANISMS

States should ensure that:

- they do not create barriers to prevent people from having their case heard in court;
- how legal responsibility is attributed between businesses that act as part of a multinational business does not limit access to remedy (see for example the corporate veil on page 169). This can mean ensuring that businesses are responsible for human rights abuses committed by other businesses that they own;
- there are options to make claims that ensure more than one person receive remedy where human rights abuses affect multiple people or whole communities;
- the courts are not corrupt and are independent of economic or political pressures from State officials and businesses;
- human rights defenders are not obstructed when documenting and reporting human rights abuses;
- the way in which legal responsibility is attributed among members of a business under the law does not allow the avoidance of accountability (see for example corporate veil on page 169 and corruption on pages 158-160);
- their courts can hear cases even where there is no other avenue of effective remedy available;
- certain groups, such as indigenous peoples and migrants, are not discriminated against and are provided with the same level of legal protection of their human rights that applies to the wider population;
- the costs of bringing claims to courts are not too high;
- everyone has access to a lawyer;
- there is the option for community members to have one court case heard together rather than each person having to have their own case heard individually;
- State prosecutors have adequate resources, expertise and support to investigate individuals and businesses in human rights-related crimes; and
- the unique positions of vulnerable peoples and women are taken into account in the design of court proceedings and the remedies that a court provides.



ALLAN IROU AND JONAH GBEMBRE BRINGING THEIR COURT CASES TO NIGERIAN COURTS

A fisherman called Allan Irou's land, fish pond and creek were polluted by oil spills from Shell and BP's oil operations. He sought an injunction (a court order which requires an end to the illegal activity) to stop Shell and BP continuing to pollute his waters. The Nigerian High Court refused to provide the injunction because it would affect trade and jobs and was 'the main stay of this country's revenue'.

Jonah Gbembre, representing the Iwheriken Community in Delta State in the Niger Delta area, sued Shell under the fundamental rights enforcement procedure in the Nigerian Constitution stating that his community's human rights under the Constitution and African Charter on Human and Peoples' Rights had been violated. Gas flares had led to an increase of breathing problems and cancer amongst the community and damage to their buildings caused by acid rain. The court ruled that the rights in the African Charter and Nigerian Constitution, when read together, clearly recognised a right to a 'clean poison-free, pollution-free and healthy environment'. The court then ordered that Shell could no longer flare gas near the community.⁹⁰

3.7.2 Home States

Normally, the courts in a State are expected to hear cases about disputes which have occurred within that State's territory. However, the courts in home States may, and are sometimes required, to exercise jurisdiction over human rights abuses abroad. A description of extraterritorial jurisdiction is on pages 65-67. There are many reasons why individuals may seek to have their case heard in the courts of a home State:

- The business project in the host State may be temporary or already finished. It can remove or sell its property and wealth very quickly, even disappearing from the host State completely. This means that if a court orders that a business pays compensation, that it may be able to avoid doing so. However, the home State is where it has a fixed, long-term presence. The part of the international business that is in the home State is also likely to be greater in size and wealth and therefore it is more likely to have the required wealth to provide effective remedy.
- Courts in home States may also be more likely to achieve justice and remedy than courts in the host State, particularly where courts in host States do not function as well. For instance, the host State's courts may suffer from corruption, inefficiency, severe delays, lack of independence or other factors that undermine justice.
- Courts in home States may be likely to award more compensation than host State courts. They may also offer other advantages, such as the possibility of class action or financial support, which are not available in host State courts.

Two principle difficulties that community members have in taking their case abroad are State rules on jurisdiction and the corporate veil.

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CLASS ACTION

A class action is where one member of a community, or other group, represents the whole group in a court case. For instance, a village is damaged by pollution. One member of that village could take a 'class action' for all the villagers affected. If he or she wins, the whole village wins. This is easier and cheaper than everyone in the whole village having their case heard individually.

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CORPORATE VEIL

The 'corporate veil' refers to situations where a business has divided itself into smaller businesses under the law. Each of these businesses is responsible for its own 'liabilities'. A liability refers to a responsibility to do or not do something under the law.

For instance, an international clothing business, which is a collection of different smaller businesses all over the world, could set up a factory in Togo. This factory could be legally set up as its own business. The factory could then break Togolese laws on payment of wages or treatment of employees. The employees could then take their dispute with the factory to a Togolese court. If a Togolese court orders the factory to pay compensation

to employees, then the Togolese factory may be responsible for these payments on its own, not the larger international business it is part of. This will be a problem where the Togolese business does not have enough money to pay this compensation. Hence, the corporate veil often acts as a barrier for individuals claiming remedy.

Some States have laws which recognise that one business should be responsible for the liabilities of another business where it is clear that both businesses are part of the same business in reality. For example, where both businesses are members of the same group, owned by the same people and/or are controlled by the same people. This is referred to as 'piercing the corporate veil'.



THE PLIGHT OF THE Ogoni PEOPLE IN US COURTS ABROAD

Following these serious human rights abuses against the Ogoni people in 1996 (see page 12), (civil) court cases were brought against Shell in different States. In the US, a case was brought against Shell and the head of its operations in Nigeria, Brian Anderson, in courts in the US alleging summary execution, crimes against humanity, torture, inhuman treatment, arbitrary detention, murder, aggravated assault, forced exile, infringements of the rights to life, freedom of assembly and freedom of association, subjection to emotional stress and corruption. These court proceedings went on for 13 years until, in 2009, the parties settled out of court. This led to 15.5 million US dollars in compensation and the creation of a trust whose intention was to benefit the Ogoni people.⁹¹



OUT-OF-COURT SETTLEMENT

An out-of-court settlement is when those involved in a court case (the business and community members) agree to end the court case if a certain remedy is provided.

3.7.3 Non-judicial grievance mechanisms

The UN Guiding Principles on Business and Human Rights also require that States, businesses and other actors should set up non-judicial grievance mechanisms to supplement judicial mechanisms. Non-judicial mechanisms should not prevent individuals and communities from accessing judicial mechanisms. The Committee on Economic, Social and Cultural Rights has stated that non-judicial mechanisms may be adequate in many cases as long as they are accessible, affordable, timely and effective. Normally, there should be a right to take the decision to a court afterwards. However, in some cases satisfying the requirements of human rights will require judicial remedies, not non-judicial remedies. All non-judicial remedies should meet the effectiveness criteria in Guiding Principle 31 (see page 172).

NON-JUDICIAL GRIEVANCE MECHANISMS

The Access to Remedy Pillar of the UN Guiding Principles on Business and Human Rights refers to grievance mechanisms, mechanisms aimed at resolving grievances of individuals and/or communities. A grievance is a complaint that an individual or community has when they believe they have been wronged. This wrong could be where a business breaks a law, where a business fails to carry out part of a contract (e.g. fails to pay its workers on time), where it fails to meet its promises, where it breaks local customs or where it generally behaves in a manner which is unfair to communities. A ‘mechanism’ can refer to any kind of process which aims to resolve grievances.

Non-judicial grievance mechanisms play an essential role in complementing judicial mechanisms. Courts cannot always address all human rights abuses, and, where courts are not necessary, non-judicial mechanisms may have processes that can better provide remedy in certain cases. Non-judicial mechanisms cover a wide variety of different approaches:

- **Negotiation** – direct dialogue between the victims of human rights abuse and the business, with the aim of providing remedy through mutual agreement.
- **Mediation/Conciliation** – direct or indirect dialogue between the victims of human rights abuse and the business, assisted by a neutral mediator, with the aim of providing remedy through mutual agreement.
- **Arbitration** – a process by which neutral arbitrators, selected by the victims of human rights abuse and the business, hear the positions of the parties, conduct some form of questioning or wider investigation and arrive at a judgment on what the remedy should be. In some cases, this decision may be legally binding.
- **Adjudication** – a process by which neutral adjudicators hear the positions of the parties, conduct some form of questioning or wider investigation and arrive at a judgment on what the remedy should be. The difference between adjudication and arbitration is that adjudication does not require the prior consent of business but takes place upon receipt of the community’s or community member’s complaint. This may be as a result of an exercise of public powers (e.g. Ombudsmen/National Human Rights Institutions), or as a result of a contract (e.g. a contract for finance with an International Financial Institution).

Unlike courts, which apply law, non-judicial grievance mechanisms may apply a variety of different standards including their own standards. These standards should incorporate human rights, and all remedies should be in accordance with international human rights law. Examples of the role of different actors in setting up non-judicial grievance mechanisms are described below:

States should set up non-judicial grievance mechanisms (Guiding Principle 27). Examples of host State-based mechanisms are the Ombudsmen and National Human Rights Institutions which are empowered to remedy human rights harms. See pages 98, 99, 121 and 130 for their provision of remedy in practice. Examples of home-State-based mechanisms are National Contact Points set up under the OECD Guidelines for Multinational Enterprises (see pages 96, 120 and 130 for examples of their provision of remedy in practice). Businesses should set up operational-level grievance mechanisms (Guiding Principle 29) (see page 175 for an example of their provision of remedy in practice). International Financial Institutions have a role to play in remedying human rights harms (see pages 92, 119, 129 and 148 for examples of their provision of remedy in practice). Multistakeholder initiatives and industry initiatives should set up grievance mechanisms (Guiding Principle 30) (see pages 100 and 121 for examples of their provision of remedy in practice). All of these mechanisms are of varying degrees of effectiveness in practice, and they should not replace courts as the primary route of remedy.

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GUIDING PRINCIPLE 31

The UN Guiding Principles for Business and Human Rights require all non-judicial mechanisms to meet certain criteria in order to be effective. UN Guiding Principle 31 requires non-judicial mechanisms meet the following criteria:

- a) Legitimate – the grievance mechanism must be fair and must be trusted by the communities.
- b) Accessible – communities must know about the grievance process and must be able to access it.
- c) Predictable – the grievance procedure must have a clear procedure and the community must know about how the procedure works, what kind of remedies can be provided and how the mechanism ensures that these remedies are implemented.
- d) Equitable – communities must have access to relevant information regarding their grievances and should have access to any expertise that they need to make informed decisions.
- e) Transparent – communities must be informed about the progress of their complaint and the grievance mechanism should publicly publish the grievances that it hears and what remedies it provides.
- f) Rights-compatible – outcomes and remedies must comply with human rights.
- g) A source of continuous learning – the business should learn from the complaints in order to improve both the grievance mechanism and their due diligence processes.

Operational-level grievance mechanisms must meet all of the above criteria and must *also* be:

- h) Based on engagement and dialogue – the communities must be involved in the design of the operational-level mechanisms and remedy cannot be determined by the mechanism (because if the business determines what remedy it should pay then the process will be illegitimate). Instead, the remedy must be determined through dialogue between the operational-level mechanism and the communities. If the business and the affected community or individual cannot reach agreement on the appropriate remedy, it may prove necessary either to involve a neutral third party as a mediator or to turn to adjudication.

3.7.4 Businesses

A business's responsibility to respect human rights requires it to provide remedy (Guiding Principle 22), by itself or in co-operation with others, such as courts, States, international organisations, International Financial Institutions, multistakeholder initiatives and other businesses. One way a business can provide remedy directly is to set up its own non-judicial mechanism. Non-judicial grievance mechanisms set up by businesses are often referred to as operational-level grievance mechanisms (Guiding Principle 29).

Operational-level grievance mechanisms are non-judicial grievance mechanisms which are directly accessible to individuals and communities who are adversely impacted by a business. They are set up and run by a business, either on its own or with other actors such as other businesses, civil society organisations, independent experts or mediators. Affected communities may inform the business of adverse human rights impacts, thereby helping businesses with their responsibility to identify adverse human rights impacts. Operational-level grievance mechanisms can provide remedy for grievances and human rights harms.

These mechanisms work best where the grievances that communities have with a business project are small (are not serious human rights harms) and can be resolved quickly and easily. Where a business's activities have led to serious human rights harms or crimes, then communities should look for remedy in courts. Operational-level grievance mechanisms must provide remedy based on dialogue with affected individuals and communities, and communities must agree to any remedy provided. Remedy provided by businesses must meet the following requirements:

- Community members' ability to have the dispute heard in a court, or other independent mechanism, should not be obstructed where adjudication is needed.
- No legal waiver should be required by a non-judicial grievance mechanism, although there is no blanket ban on legal waivers in current international standards and practice.
- It should be agreed upon with the community, taking into account the community's view of what an effective remedy is.
- It should be based on open conversation between community members and the business. Processes set up between the communities and the business must be designed with the participation of community members. A business's relationship with communities is less likely to succeed if talks over remedying human rights abuses do not take place as part of wider talks about the relationship between a business and a community.

- It should pay particular attention to vulnerable peoples and take account of the different risks faced by men and women.
- It should be transformative. Any remedy should seek to overcome power relationships between the community and the business, e.g., where businesses provide development projects such as schools to the community or train their staff to not commit human rights abuses, they should ensure communities are involved in the design and implementation of these projects. Rather than requiring communities to come into business buildings and carry out business friendly dialogue in the office, business representatives should consider going into communities and carrying out dialogue in such a way that respects their traditions.
- It should ensure that processes are legitimate and are trusted by communities.
- It should be accessible by everyone who has a complaint against the company regarding a human rights abuse or any other wrong.
- It should have a clear and known procedure with an indicative time frame for each stage and provide information about the process's performance.
- It should ensure that communities have reasonable access to sources of information, advice and expertise so they can make informed opinions.
- It should ensure that outcomes and remedies accord with internationally recognised human rights.

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LEGAL WAIVERS

A legal waiver is a document that a business gets a person to sign to remove legal liability from the business for an adverse human rights impact. Requiring a person to sign a legal waiver will prevent them from having their dispute heard in a court.

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OPERATIONAL-LEVEL MECHANISMS

Some human rights impacts committed by businesses must involve the State in both ensuring accountability and providing remedy. This includes, but is not limited to, human rights impacts that amount to crimes.

States have a duty under international law to provide effective remedy for human rights abuses. While operational-level mechanisms can assist in resolving many problems before they escalate to human rights abuses, the remediation of human rights abuses should involve the State. Otherwise, operational-level mechanisms that seek to address human rights abuses may leave victims of abuses unprotected, and may allow the business responsible to go unpunished.

As a consequence, it is essential that the State has some monitoring role of operational-level mechanisms to ensure that, where appropriate, the State intervenes. Operational-level mechanisms should never prevent or hinder access to, or the availability of, State-based mechanisms.



A BUSINESS AND ITS OPERATIONAL-LEVEL MECHANISM IN THE CONGO

A logging company, Congolaise Industrielle des Bois (CIB), obtained a legal license to log in Congo Brazzaville. It was working towards full certification with the Forest Stewardship Council (FSC) (a multistakeholder initiative). To comply with FSC standards, the business developed an operational-level grievance mechanism to remedy the complaints of local communities living nearby.

A driver beat up a teenage boy who jumped onto his lorry in order to get a lift. The community then planned to confront the driver by putting sacred leaves on the road which can only be crossed by initiates of the Ejengi secret society (anyone else risks a dangerous forced initiation). The Congolese police then arrested the teenage boy's father for being irresponsible. The company took the boy to hospital to tend to his injuries, negotiated the boy's father's release from prison and sacked the driver. They paid compensation to the boy and the father. After the road block was removed by the communities, the company came with sacks of rice, cans of palm oil, wine and other items as compensation for the injury.

While the business had in place a number of different avenues for dialogue that together served as a grievance mechanism, overall the mechanism did not offer local people clear guidelines about what they could do and what actions were open to them in different circumstances.⁹²

3.7.5 International Organisations

Six UN human rights treaty bodies may hear individual complaints provided that the State against whom the complaint is made is party to the relevant treaty/protocol:

- Committee on Civil and Political Rights – assesses individual complaints based on the International Covenant on Civil and Political Rights.
- Committee on Economic, Social and Cultural Rights – assesses individual complaints based on the International Covenant on Economic, Social and Cultural Rights.
- Committee on the Elimination of Racial Discrimination – assesses individual complaints based on the International Covenant on the Elimination of Racial Discrimination.
- Committee on the Elimination of Discrimination Against Women – assesses individual complaints based on the Covenant on the Elimination of Discrimination Against Women.
- Committee Against Torture – assesses individual complaints based on the Covenant Against and Other Cruel, Inhuman or Degrading Treatment or Punishment.
- Committee on the Rights of Persons with Disabilities – assesses individual complaints based on the International Covenant on the Rights of Persons with Disabilities.

The UN Human Rights Council may also hear individual complaints about a State's overall human rights performance if this issue is not being considered by the above bodies.

In the context of business and human rights, complaints may be lodged against the State under its obligation to respect, either for complicity in the acts of a business or if the business is owned by the State. It may also be lodged under the State's duty to protect. No complaints can be lodged directly against businesses (for examples see page 83). The International Labour Organisation may hear complaints submitted by trade unions (see page 118 for an example).

Some international environmental International Organisations also have complaints procedures. Often they cannot be accessed by individuals. Whilst these procedures primarily relate to environmental issues, they may also cover other human rights issues. One example is the United Nations Educational, Scientific and Cultural Organization's (UNESCO's) Individual Complaints Procedure. Individuals, groups of individuals and NGOs can submit an individual complaint to the Committee on Conventions and Recommendations of UNESCO if they are direct victims or if they have a sufficient connection to a violation of the right to education, participation in cultural life and to share scientific advancement, information (including freedom of opinion and expression), freedom of thought, conscience and religion and freedom of association. For an example of UNESCO's complaint procedure, see page 128.

Regional human rights treaties also have non-judicial mechanisms for resolving disputes. One example is the African Commission on Human and People's Rights. It collects documents, undertakes missions of information, studies and research on African problems in the field of human and peoples' rights, organises conferences, disseminates information and makes recommendations to Member States. A communication can be lodged against a State which has a duty to respect, protect, promote and fulfil these rights. It is not clear whether a complaint can be made against a business directly; no complaint has been made against a business at the time of writing. For an example of the African Commission hearing a complaint, see pages 118.



- Amnesty International, *Injustice Incorporated: Corporate Abuses and the Right to Remedy* (Amnesty International 2014). www.amnesty.org

Biashara Mbaya: a fictional scenario

Mtego Nchii Inc is a mining business in the State of Nchii which mines rough diamonds. It was set up and owned by Mtego International and Serikali Mining. Serikali Mining is a business set up in Nchii and owned entirely by the State. Mtego International is an internationally operating business incorporated in the United States. Mtego International sells the diamonds from Nchii to Duka Diamonds, a diamond store which is also based in the United States. In order to set up the mine, Mtego Nchii Inc received financing from the International Finance Corporation and the United States government.

Mtego Nchii Inc hires children to carry out dangerous mining activities in the smaller shafts of the mine. The mining activities of Mtego Nchii Inc lead to chemical waste being spilt into nearby freshwater streams. Mtego Nchii Inc did not check what the effects of the chemical waste would be on nearby communities or the environment. The nearby indigenous, fishing community (the Jamii community) suffer health problems and the fish that they depend on are dying. At no point did Mtego Nchii Inc or Mtego International carry out consultations with the Jamii community.

Many of the Jamii community cannot afford to take their case to court because of the high legal fees. Those that do take the case to the Nchii courts do not succeed because the court concludes that all land belongs to the Nchii State, even though the Jamii community have lived there for many generations. The Jamii community have no rights to the land they live on under Nchii law. The Jamii community claim that the business should restore their lands, but the business says that it is not their responsibility. The Jamii community decide that they can no longer live on their traditional lands because they can no longer maintain their livelihoods. Some of the Jamii community members become angry and carry out a peaceful protest outside the mine. The Nchii government police come and shoot at them, killing two of them. Many community members are detained and arrested and beaten up in prison.

The Nchii Government has ratified the fundamental ILO conventions, the International Covenant for Civil and Political Rights and the International Covenant for Economic, Social and Cultural Rights. Mtego International is a member of the Voluntary Principles on Security and Human Rights. Duka Diamonds is a member of the Fair Labour Association. You work for the human rights NGO 'Haki Zetu'. The Jamii community come to you for advice. Answer the following questions:

1. What are the relationships between the businesses above?
2. Which human rights have been adversely affected?
3. Which international instruments are relevant to this scenario?
4. What obligations/responsibilities does the Nchii government have?

5. What obligations/responsibilities does the US government have?
6. What obligations/responsibilities does Mtego International/Mtego Nchii Inc have?
7. What obligations/responsibilities does Duka Diamonds have?
8. What obligations/responsibilities does the International Finance Corporation have?
9. What pressures exist on Mtego International to respect human rights?
10. What potential alternative routes to remedy do the Jamii community have if Mtego Nchii Inc and the Nchii government do not provide effective remedy?

Some suggested answers are on page 178.



Annexes

Business and Human Rights Resource Centre

The principle resource in business and human rights is the Business and Human Rights Resource Centre. The Business and Human Rights Resource Centre is a global business and human rights knowledge hub, delivering up-to-date news in eight languages, including Arabic, English, French, Portuguese and Spanish, as well as referencing the latest developments in relation to business and human rights issues.

www.business-humanrights.org/

Sub-Saharan African NGOs

On the next pages is a description of the relevant NGOs operating in Africa. In many areas of sub-Saharan Africa there are significant hurdles that local NGOs often face in doing their work. The continued independence and even existence of certain NGOs is under constant threat. Hence Amnesty cannot vouch for the effectiveness, independence or existence of the NGOs below. Where the NGOs do not have their own website, either a third party website is referenced (often the African Coalition for Corporate Accountability) or their Facebook page.

Country	Name / Website	Description
BENIN	Nature Tropicale www.naturetropicale.org	They are focussed on the preservation of the environment and biodiversity.
BURKINA FASO	Organisation pour le Renforcement des Capacités de Développement www.orcade.org/	They work with economic issues and social policies to promote development in Burkina Faso.
BURUNDI	Action Ceinture Verte pour l'Environnement (ACVE) www.accahumanrights.org/en/members/	They work on the protection of the environment with its headquarters in Bujumbura.
BURUNDI	Collectif des Associations et ONGs Féminines du Burundi www.accahumanrights.org/en/members/	They are a group of women's associations which puts together women for specific purposes and activities, including protecting their rights.
CAMEROON	Centre for Human Rights and Democracy in Africa www.chrda.org/	With offices in Africa and the United States, they help local activists, scholars, and researchers in providing research facilities and creating a culture of respect of human rights and democracy.
CAMEROON	Centre pour l'Environnement et Developement (CED) http://www.cedcameroun.org/	They aim to protect the rights of local and indigenous communities in the forests of Central Africa through the promotion of environmental justice and sustainable forest management, including reducing the environmental and social impacts of extractive industries.
CAMEROON	Global Network for Good Governance (GNGG) www.gngg.us	The network is a non-profit, non-governmental, research, information and training organisation which aims to help develop practical and country-tailored strategies and mechanisms to combat corrupt practices and to foster participation and transparency.
CAMEROON	National Commission on Human Rights and Peoples Rights www.cndhl.cm	It aims to implement and promote the respect of human rights in Cameroon. It receives all complaints concerning cases of violation of human rights and carries out investigations and reports to the President of the Republic.
CAMEROON	ONG Un Monde Avenir www.unmondeavenir.org	Un Monde Avenir has three objectives: 1) Access to rights; 2) The fight against discrimination; 3) Mobilization of the public.
CAMEROON	Reach out Cameroon www.reachoutcameroon.org	They work on development oriented projects and programmes. They have provided assistance in community development, health and sanitation, gender empowerment and wealth creation.
CAMEROON	Réseau Camerounais des Organisations des Droits de l'Homme (RECODH) www.recodh.org	They are a group of organisations working for the promotion and protection of human rights in Cameroon. They have activities in relation to the UNDP/CNDHL National Governance Programme and the UNDP Human Rights Programme.
CHAD	Public Interest Law Centre www.accahumanrights.org/en/members/	They aim to provide legal assistance to vulnerable people, including trainings of paralegals in Chad.

Country	Name / Website	Description
CONGO BRAZZAVILLE	Rencontre pour la Paix et les Droits de l'Homme (RPDH) www.rpdh-cg.org/	They seek to promote and protect human rights in Congo Brazzaville, through the establishment of the rule of law, education for citizenship, transparency of natural resources, social justice and good governance.
CÔTE D'IVOIRE	FNDP – Forum National sur la Dette et la Pauvreté www.oecdwatch.org/organisations-en/fndp-forum-national-sur-la-dette-et-la-pauvrete	They work on economic, social and cultural rights in Côte d'Ivoire.
CÔTE D'IVOIRE	Groupe de Recherche et de Plaidoyer sur les Industries Extractives (GRPIE) www.accahumanrights.org/en/members/	A group of researchers focussed on extractives industries in Côte d'Ivoire.
DRC Democratic Republic of the Congo	Action Contre l'Impunité pour les Droits Humains (ACIDH) www.accahumanrights.org/en/members/	They are focussed on reforming the judicial institutions in the DRC with a view to better protection of human rights.
DRC	Actions pour les Droits, l'Environnement et la Vie www.accahumanrights.org/en/members/	They work throughout the Bas-Congo province. They aim to promote sustainable development based on the protection of the environment and the respect of human rights.
DRC	African Resources Watch (AfreWatch) www.afrewatch.org	AfreWatch works with communities to reinforce the ability of organisations to be involved in the natural resources sector. It works to improve policies on natural resources. It provides assistance for communities including organising, documentation, research, litigation, organising conferences, as well as training and education.
DRC	Centre d'Appui à la Gestion Durable des Forêts Tropicales (Cagdft) www.facebook.com/cagdft/	They provide capacity building and support for the various actors involved in forest management.
DRC	Centre de Recherche sur l'Environnement, la Démocratie et les Droits de l'Homme (CREDDHO) www.accahumanrights.org/en/members/	It operates in North Kivu on environment, democracy and human rights.
DRC	Conseil National des Organisations Non Gouvernementale de Développement (CNONGD) www.cnongdrdc.org	A network of 600 NGOs aiming to better contribute to the democratization efforts of the DRC and the coordinated development of poor local communities.
DRC	Groupe d'Appui aux Exploitants des Ressources Naturelles www.accahumanrights.org/en/members/	Their focus is on natural resources. Amongst other things, they have worked on artisanal mining. They work with the Kimberly Process (see pages 155-156).
DRC	JUSTICIA Asbl www.accahumanrights.org/en/members/	An organisation for the promotion and protection of human rights and international humanitarian law based in Katanga.
DRC	Observatoire Gouvernance et Paix www.accahumanrights.org/en/members/	They work on good governance, socio-economic rights, democracy, social communication, natural resources.

Country	Name / Website	Description
DRC	PremiCongo www.premicongo.org	They aim to contribute to the establishment of sustainable governance of Katanga's clear forests (miombo).
DRC	Réseau CREF www.reseaucref.org	It operates in the North Kivu province aiming to realise the rights of the Pygmy indigenous peoples as well as the preservation of the forest, the ecosystem and the climate.
DRC	Southern Africa Resource Watch (SARW) www.sarwatch.org	A project of Open Society Initiative for Southern Africa, they aim to monitor corporate and State conduct in the extraction and beneficiation of natural resources in the Southern Africa region.
DRC	The Regional Council of Non-Governmental Organisations of Development CRONGD www.accahumanrights.org/en/members	A network of the more than 66 development NGOs of the province of Kasai Oriental in the DR Congo.
EQUATORIAL GUINEA (U.S.)	Equatorial Guinea Justice www.egjustice.org	They aim to promote human rights, the rule of law, transparency, and civic participation to build a just Equatorial Guinea. They are actually based in the United States (as human rights organisations are not permitted to operate within the country).
ETHIOPIA	Human Rights Council (HRCO) -Ethiopia www.accahumanrights.org/en/members	They are a non-profit, non-governmental organisation that works towards building a democratic system, promotes rule of law and due process, and encourages and conducts human rights monitoring.
THE GAMBIA	African Centre for Democracy and Human Rights Studies www.acdhrs.org	The African Centre promotes human rights and democracy issues in the African continent through training, advocacy, networking, action-oriented research, publications and documentation.
GHANA	Centre for Indigenous Knowledge and Organisational Development (CIKOD) www.cikodgh.org	CIKOD's mission is to strengthen the capacities of (indigenous) communities through traditional authorities and local institutions.
GHANA	Centre for Environmental Impact Analysis www.ceiagh.org	They do research, waste management and advocacy on mining, including the disposal of heavy chemicals or harmful chemicals into rivers around the mining communities, and advocacy around climate change.
GHANA	Livelihood and Environment Ghana (LEG) www.accahumanrights.org/en/members	They work on issues which include living and working conditions, corruption, lack of meaningful consultation, pollution, and violence, including violence against women. They have been involved in advocacy surrounding mining in Ghana.
GHANA	Social Support Foundation (SSF) www.ssfghana.org	Their aim is to improve the situation of marginalized Ghanaians, including work on both large-scale mining and unlicensed, small scale mining.

Country	Name / Website	Description
GHANA	Wassa Association of Communities Affected by Mining (WACAM) www.wacamghana.org	A grassroots organisation working with communities affected by the operations of multinational mining companies.
GUINEA	Centre de Commerce International pour le Développement (CECIDE) http://cecideguinee.org	They aim to promote and protect the social and economic rights of vulnerable peoples, with the active participation of society in the sustainable development process.
KENYA	Endorois Welfare Council (EWC) www.accahumanrights.org/en/members	They aim to advocate, promote and facilitate social justice and sustainable development among the Endorois indigenous people and other marginalized communities.
KENYA	Jamaa Resource Initiatives www.facebook.com/pg/jamaaresourceinitiatives.or.ke	They advocate for communal participation and management of resources from resource rich communities.
KENYA	Kenya Human Rights Commission (KHRC) www.khrc.or.ke	They aim to facilitate and support individuals, communities and groups to claim and defend their rights, holding State and non-State actors accountable for the protection and respect of all human rights for all peoples and groups.
KENYA	Kerio Valley Community Organisation (KVC0) www.kv-co.org	They provide community-capacity building including teaching the basics of oil exploration and production, the possible adverse effects and benefits, and rights under Kenyan law, including the right to consultation.
KENYA	Nairobi People Settlements Network (NPSN) www.npsn.org/index.php/en	They work in partnership with local non-governmental organisations, governments, ministries, and community-based organisations, private sector and donor agencies to champion and promote human rights and assist the most vulnerable and marginalised.
KENYA	Narasha Community Development Group www.narashanet.com	They work to advocate and defend the rights of the marginalized, indigenous and vulnerable communities living in the Olkaria region in Kenya. They have supported people who had been forcibly displaced and resettled to engage with the World Bank Inspection Panel and other non-judicial recourse mechanisms.
LIBERIA	Association of Environmental Lawyers of Liberia (Green Advocates) www.greenadvocates.org	A public interest environmental law organisation which aims to empower poor people who are victimized in resource exploitation by, amongst other things, using the rule of law to hold States and businesses accountable for their actions. Provides legal aid/services to impoverished communities who suffer the activities of State and non-State actors.
LIBERIA	Committee for Peace and Development Advocacy (COPDA) www.copdasweden.org	They aim to help build a society where there is respect for basic human rights and peaceful coexistence.

Country	Name / Website	Description
LIBERIA	Save my Future www.samfufoundation.org	They educate local people how to use natural resources of Liberia for their economic and social well-being and monitor the activities of multinational companies in Liberia to ensure that they meet government standards for the care and employment of their workers.
LIBERIA	Sustainable Development Institute (SDI) http://sdiliberia.org	They work to transform decision-making processes of natural resource management so the benefits are shared equally. SDI's work aims to create space for the participation of local communities in decision-making processes on natural resources.
MALAWI	Citizens For Justice/ Malawi's Natural Resource Justice Network http://websites.inets.info/CFJ%20Malawi%20III/Home.html	They co-ordinate Malawi's Natural Resource Justice Network, which is a coalition of 33 organisations committed to ensuring Malawi's natural resources are used for the benefit of all Malawians, including through research, advocacy, and lobbying from a rights perspective.
MALI	Fondation pour le Développement au Sahel - FDS/Mali https://www.facebook.com/Fondation-pour-le-Développement-au-Sahel-FDSMali-407005489638748/	Their work is focused on community mobilisation and rights-based education at the local, national, sub-regional levels to influence practices, policies and legislation to the benefit of communities. They seek to protect communities affected by mining, including protection of people's rights and livelihood.
MAURITANIA	Secours Net www.secoursnet.mr	They work for the promotion of human rights in Mauritania, including many programmes for young people. They also provide technical support to civil society organisations.
MOZAMBIQUE	Centro Terra Viva www.ctv.org.mz	They aim to contribute to better decision-making with respect to environmental policies and legislation and increase the participation capacity of civil society in environmental management.
MOZAMBIQUE	League of Human Rights (LDH) www.accahumanrights.org/en/members	They aim to protect and promote fundamental human rights, including allegations of rape and other outrages.
NIGER	Collectif des Organisations de Défense des Droits de L'Homme et de la Démocratie (CODDHD) www.accahumanrights.org/en/members	They are a collective of more of than 44 associations and movements defending human rights in Niger. They aim to contribute to the social and economic development of Niger through the protection, promotion and defence of human rights and democracy.
NIGERIA	African Law Foundation (AFRILAW) www.afrilaw.wordpress.com/about	It is a non-profit and non-governmental organisation of lawyers working to ensure poverty eradication, democracy and good governance, peace building and conflicts management, human rights and justice, sustainable development and environmental protection and sustainability in Africa and around the world.

Country	Name / Website	Description
NIGERIA	Community Enhancement and Environmental Awareness Foundation (CEEAF) www.accahumanrights.org/en/members	They seek to add value to the global drive for poverty eradication among the rural and urban dwellers in the Nigerian society as well as promote the protection and respect for environmental, social and economic development.
NIGERIA	Community Policing Partners for Justice, Security and Democratic Reforms (COMPPART) comppartfoundation.org	Their mission is to reduce the antagonistic relationship between civil society and law enforcement agencies and encourage partnership problem solving approach in crime prevention.
NIGERIA	Environmental Rights Action (ERA) www.foei.org/member-groups/africa/nigeria	ERA is the Nigerian chapter of Friends of the Earth International (FoEI). ERA is the co-ordinating NGO in Africa for Oilwatch International, the global South network of groups concerned about the effects of oil on the environment of people who live in oil-bearing regions.
NIGERIA	Foundation For Environmental Rights, Advocacy & Development (FENRAD) www.facebook.com/Foundation-For-Environmental-Rights-Advocacy-Development-Fenrad-Nigeria-343073045859762	Their focus is on environment, human rights, community development, social justice, good governance, education, anti-corruption, budget network and tracking.
NIGERIA	Foundation for the Conservation of the Earth (FOCONE) www.escc-net.org/member/foundation-conservation-earth-focone	They pursue equipping people with the right skills aimed at empowering them to advocate for their own development and livelihood security; supporting the vulnerable groups to attain their life potential without discrimination and stigmatization; and enhancing community voices in the public arena on development issues in Nigeria, amongst other things.
NIGERIA	Global Rights Nigeria www.globalrights.org/ngn	Global Rights is working to increase the knowledge of civil society, host communities, businesses, and government officials in Nigeria about the human rights implications of the extractive industries.
NIGERIA	Kebetkache Women Development & Resource Centre www.kebetkachewomencentre.org	Their mission is to contribute to the achievement of good governance, sustainable development and reduction in maternal mortality through capacity building, advocacy for quality health, respect for women's human rights, peace & security, equal opportunities and environmental justice.
NIGERIA	Peace Point Action (PPA) www.accahumanrights.org/en/members	Founded to address needs of vulnerable communities in the Niger Delta Region of Nigeria targeting children, youth, women and disabled persons on issues of environmental justice, good governance, HIV & AIDS prevention, and health and gender.
NIGERIA	Support Initiative for Sustainable Development (SISDEV) www.facebook.com/Sisdevorganisation	SISDEV helps support foreign governments, multilateral organisations, international donor agencies etc., to fund programmes that serve the needs of the rural people.

Country	Name / Website	Description
NIGERIA	The Leadership Initiative for Transformation and Empowerment (LITE-Africa) www.lite-africa.org	Their current programmes focus on three thematic areas: Governance & Human Rights, Sustainable Livelihoods & Health, and Humanitarian Support Services.
NIGERIA	Women Environment and Development Network (WEDEN) www.accahumanrights.org/en/members	They operate in Nigeria, focussing one women's role with respect to environmental and development issues.
NIGERIA	Women Initiative for Transparency and Social Justice (WITSOJ) https://witsoj.org	Coalition of professional organisations, NGOs, CBOs, labour unions and FBOs with a track record of pursuit and mobilization of citizens especially Women and Youth to be economically, socially and politically emancipated.
RWANDA	Community of Marginalized Potters of Rwanda (COPORWA) https://coporwalen.wordpress.com	They work for the promotion and defence of the potters' rights in Rwanda.
SENEGAL	Forum Civil www.forumcivil.sn	A collection of volunteers across the country who work, amongst other things, on the governance of private and public institutions, including transparency and accountability, the fight against corruption and participation.
SENEGAL	Lumière Synergie pour le Développement (LSD) www.facebook.com/LumiereSynergieDeveloppement	They are an advocacy organisation, working to promote good governance and sustainable mining in Senegal, and Africa.
SIERRA LEONE	Network Movement for Justice & Development (NMJD) www.nmjd.org/home/index.php	They focus on empowering people, as well as strengthening their capacity, to build a free, just and democratic Sierra Leone.
SIERRA LEONE	Sierra Leone Network on the Right to Food (SiLNoRF) www.sites.google.com/site/silnorf/home	They seek to use evidence-based lobbying and advocacy in order to ensure a constructive dialogue and engagement with relevant stakeholders for the effective and efficient realization of the right to food in Sierra Leone, including land lease negotiation.
SIERRA LEONE	Women's Centre for Good Governance and Human Rights (WOCEGAR - SL) www.accahumanrights.org/en/members/	They focus on the empowerment of women and women's rights in the context of both good governance and human rights.
SOUTH AFRICA	Centre for Applied Legal Studies (CALS), Wits University www.accahumanrights.org/en/members	Through a combination of litigation, advocacy and research, they aim to challenge systems of power and act on behalf of the vulnerable.
SOUTH AFRICA	Centre for Human Rights, University of Pretoria www.chr.up.ac.za	They work towards better human rights education in Africa, including the dissemination of human rights materials.
SOUTH AFRICA	Economic Justice Network of FOCISSA www.ejn.org.za	They strengthen the commitment of the Christian church in its advocacy work on economic justice and engage people in the promotion of just economic and social structures.

Country	Name / Website	Description
SOUTH AFRICA	Legal Resources Centre www.lrc.org.za	Amongst other things, it acts as an independent, non-profit public interest law clinic which uses law as an instrument of justice and provide legal services for the vulnerable and marginalised.
SOUTH AFRICA	Organisation of African Youth (OA Youth) www.oayouth.org	They work with young people to assert their power in numbers, energy and imagination to transform Africa.
TANZANIA	Association for Law and Advocacy for Pastoralists (ALAPA) www.alapa.or.tz	They work with pastoralists (traditional cattle herders) and hunter gatherers in Tanzania with programmes on human rights, the environment and climate change and legal aid.
TANZANIA	Foundation HELP www.accahumanrights.org/en/members	They work to support local communities across a broad base of participatory and multi-sectoral development sectors throughout the selected regions of Tanzania.
TANZANIA	Legal and Human Rights Centre (LHRC) www.humanrights.or.tz	Their objective is to create legal and human rights awareness among the public and in particular the underprivileged section of society through legal and civic education, advocacy linked with legal aid provision, research and human rights monitoring.
TANZANIA	Mazingira Network-Tanzania (MANET) www.accahumanrights.org/en/members	They aim to improve citizen's livelihood by engaging local communities and stakeholders through public dialogue, media, awareness raising, research, advocacy and lobbying.
TANZANIA	Zanzibar Legal Service Centre www.zlsc.or.tz	They aim to promote access to justice and advocacy for the realisation of human rights, popularization of the knowledge of law and production of publications in areas of legal concern to the people of Zanzibar.
TOGO	Dimension Humaine www.accahumanrights.org/en/members	They are a humanitarian association that has been working on the welfare of communities, particularly women and children in difficult situations.
TOGO	Programme d'Appui à la Femme et à l'Enfance Désertée www.pafed-togo.org	An organisation which assists women and children in development.
UGANDA	Advocates Coalition for Development and Environment (ACODE) www.acode-u.org	They undertake advocacy-driven public policy research and analysis on current and emerging public policy and governance issues that have a significant impact on national development.
UGANDA	Buliisa Initiative for Rural Development Organisation (BIRUDO) www.birudo.org	They carry out capacity building in order to fight poverty among the rural and urban communities in Buliisa District.

Country	Name / Website	Description
UGANDA	Community Empowerment for Rural Development (CEFORD) www.accahumanrights.org/en/members	They provide capacity development services to empower disadvantaged women, men, children, youth and their organisations through provision of trainings, advisory services, agricultural inputs, research and advocacy.
UGANDA	Global Rights Alert www.globalrightsalert.org	Based in Kampala, they work on natural resource governance in Uganda.
UGANDA	Great Lakes Institute for Strategic Studies (GLISS) http://gliss.org	They aim for inclusive development in the Great Lakes sub-region by providing evidence-based policy options that put men, women and the youth at the centre of policy development and implementation.
UGANDA	Lake Albert Children Women Advocacy and Development Organisation (LACWADO) www.accahumanrights.org/en/members	A community-based organisation which aims to empower communities to engage with oil companies, leaders and other stakeholders in the full realisation of their compensation and land rights in Buliisa district through media.
ZIMBABWE	Centre for Natural Resource Governance www.cnrzim.org	They work throughout Zimbabwe by bringing together affected communities to capacitate them for direct non-violent peaceful action to resist destructive mining and promote alternatives to mining with a major focus on promoting food security in local communities.
ZIMBABWE	Chiadzwa Community Development Trust www.facebook.com/Chiadzwa-Community-Development-Trust-Ccdt-1430700117049482/	They promote economic, social, and cultural rights for people affected by extractive industries, including demanding mining companies to respect the social and economic responsibility they have to communities; and challenging forced displacement and relocation.
ZIMBABWE	Zimbabwe Environmental Law Association www.zela.org	They work primarily on natural resource exploitation, employing investigative and evidence based research, advocacy, litigation, community capacity building and legislative oversight.

Relevant International Actors

Below is a list of international actors working on business and human rights from different angles. The countries listed are countries where the NGO has offices, but they often work in a broader array of countries than where they have offices. Some of the actors below are individual NGOs and others are coalitions of NGOs operating worldwide.

Name	Country / Website	Description
ACCESS Facility	Netherlands www.accessfacility.org	ACCESS explores better ways of working together among companies, communities and governments. It is a neutral space in which a broad range of stakeholders can learn, explore, share ideas, forge relationships, and find solutions that work for them.
ActionAid	www.actionaid.org Ghana - www.actionaid.org/ghana Kenya - www.actionaid.org/kenya Malawi - www.actionaid.org/malawi Mozambique - www.actionaid.org/mozambique Nigeria - www.actionaid.org/nigeria South Africa - www.actionaid.org/south-africa Sierra Leone - www.actionaid.org/sierra-leone Tanzania - www.actionaid.org/tanzania The Gambia - www.actionaid.org/gambia Uganda - www.actionaid.org/uganda Zambia - www.actionaid.org/zambia	The only international development organisation with their head office based in Africa (in South Africa). Their aim is to help people use their own power to fight poverty and injustice.
Accountability Counsel	United States www.accountabilitycounsel.org	Advocates for people harmed by internationally-financed projects, they employ community driven and policy level strategies to access justice, including complaints with international financial institutions.
African Coalition for Corporate Accountability (ACCA)	South Africa www.accahumanrights.org/en	A coalition of 116 organisations from 31 African countries (some of which are referenced above) which supports African communities and individuals whose human rights are adversely impacted daily by the activities of corporations, both multi-national and domestic.
Amnesty International	www.amnesty.org	Amnesty International is a global movement of more than seven million supporters, members and activists in more than 150 countries and territories who campaign to end grave abuses of human rights. Its vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights standards.
Antislavery	United Kingdom www.antislavery.org	Supports people in being better protected from slavery, working with communities to tackle the root causes of slavery through access to education and the elimination of caste and gender inequality. Has projects in Mauritania, Tanzania, Niger and Senegal.
Banktrack	Netherlands www.banktrack.org	An international tracking, campaigning and NGO support organisation targeting banks and the activities they finance.

Name	Country / Website	Description
Clean Clothes Campaign	Netherlands www.cleanclothes.org	An international alliance dedicated to improving working conditions and empowering workers in the global garment and sportswear industries.
Coalition for Rights in Development	www.rightsindevelopment.org	A global coalition of social movements, civil society organisations, and grassroots groups working to ensure that all development finance institutions respect human rights.
CORE	United Kingdom www.corporate-responsibility.org	A coalition of human rights NGOs and other relevant actors, based in the UK, who work in business and human rights.
Earthrights International	United States www.earthrights.org/search/site/africa	A non-governmental, non-profit organisation that combines the power of law and the power of people in defense of human rights and the environment.
ESCR-Net	www.escr-net.org	A network of over 280 NGOs, social movements and advocates across more than 75 countries to build a global movement to make human rights and social justice a reality for all. Some, but not all, of these NGOs work on corporate accountability.
European Coalition for Corporate Justice (ECCJ)	Europe www.corporatejustice.org	A coalition bringing together European campaigns and national platforms of NGOs, trade unions, consumer organisations and academics to promote corporate accountability.
Friends of the Earth International (FoEI)	Netherlands www.foei.org	Friends of the Earth International (FoEI) is an international network of environmental organisations in 74 countries including Nigeria and Mozambique.
Global Witness	United Kingdom www.globalwitness.org/	Many of the world's worst environmental and human rights abuses are driven by the exploitation of natural resources and corruption in the global political and economic system. Global Witness is campaigning to end this. They work in Angola, Cameroon, Central African Republic (CAR), Democratic Republic of Congo, Equatorial Guinea, Ghana, Liberia, Nigeria, South Sudan, Uganda, Ukraine and Zimbabwe.
Greenpeace	Netherlands - www.greenpeace.org Greenpeace Africa - www.greenpeace.org/africa	They defend the natural world and promote peace by investigating, exposing, and confronting environmental abuse, championing environmentally responsible solutions, and advocating for the rights and well-being of all people.
Human Rights Watch	United States www.hrw.org/africa	They investigate human rights abuses linked to the economic activities of businesses, governments and key international institutions like the World Bank.

Name	Country / Website	Description
Inclusive Development International	United States www.inclusivedevelopment.net	They aim to support and build the capacity of grass-roots organisations and communities to defend their land, natural resources and human rights against threats from harmful investment, trade and development projects.
International Accountability Project	United States www.accountabilityproject.org	They seek to end forced evictions and create new global policy and practice for development that respects people's homes, environment and human rights.
International Corporate Accountability Roundtable (ICAR)	United States www.icar.ngo	They utilise the collective power of progressive organisations to push governments to create and enforce rules over corporations that promote human rights and reduce inequality.
International Federation for Human Rights (FIDH)	France www.fidh.org/en/region/Africa/	An international human rights NGO federating 184 organisations from 112 countries, including 42 in Africa.
International Rivers	United States www.internationalrivers.org	They work with an international network of dam-affected people, grassroots organisations, environmentalists, human rights advocates and others who are committed to stopping destructive river projects and promoting better options.
International Service for Human Rights	Switzerland www.ishr.ch	They aim to support human rights defenders, strengthen human rights systems, and they participate in coalitions for human rights change.
International Trade Union Confederation (ITUC)	www.ituc-csi.org/?lang=en	The International Trade Union Confederation is the world's largest trade union federation. It has 328 affiliated organisations within 162 countries and territories which in total represent 176 million workers.
MiningWatch Canada	Canada www.miningwatch.ca	An initiative supported by environmental, social justice, indigenous and labour organisations in Canada. It seeks to address the need for a co-ordinated public interest response to the threats posed by irresponsible mineral policies and practices in both Canada and around the world.
OECD Watch	Netherlands www.oecdwatch.org	An international network of civil society organisations promoting corporate accountability, including several African NGOs. They aim to bring the perspectives and interests of NGOs and disadvantaged communities into policy discussions at the OECD.
Oxfam	United Kingdom www.oxfam.org/en	Oxfam mobilises the power of people against poverty. It works together with partners and local communities in more than 90 countries. It works in numerous countries in Africa.

Name	Country / Website	Description
Pax	The Netherlands www.paxforpeace.nl	Pax brings together people who have the courage to stand for peace. They work in the Democratic Republic of Congo, South Sudan and the borderlands with Uganda and Kenya.
Protect Defenders	Europe www.protectdefenders.eu	The European Union Human Rights Defenders mechanism, established to protect defenders at high risk and facing the most difficult situations worldwide. It is led by 12 NGOs active in the field of human rights.
Rights and Accountability in Development (RAID)	United Kingdom www.raid-uk.org	They work with affected communities, seeking redress through complaints mechanisms and legal actions throughout the world, as well as advising governments, companies and international institutions on good practice. It works a lot in the DRC.
Sherpa	France www.asso-sherpa.org	Sherpa aims to defend victims of economic crimes. The association gathers legal experts and lawyers from diverse backgrounds and works closely with many civil society organisations around the world.
Centre for Research on Multinational Corporations (SOMO)	Netherlands www.somo.nl	They investigate multinational corporations and the impact of their activities on people and the environment. They have a broad network worldwide and work in close co-operation with civil society organisations from all parts of the world.
Survival International	United Kingdom www.survivalinternational.org	They aim to prevent the annihilation of tribal peoples and to give them a platform to speak to the world about the genocidal violence, slavery and racism they face on a daily basis.
Trade Union Advisory Committee (TUAC)	www.tuac.org	An international trade union organisation which has consultative status with the OECD and its various committees.
World Wide Fund for Nature (WWF)	Switzerland http://www.panda.org	The world's leading conservation organisation, WWF works in 100 countries and is supported by more than one million members in the United States and close to five million globally.

Answers Pages for Questions to the Biashara Mbaya Scenario

The answers in this section are not exhaustive. There will be other relevant human rights, international instruments and actors than are mentioned here.

1. What are the relationships between the different actors in the Biashara Mbaya case?

Mtego Nchii Inc is a joint venture owned by Mtego International and the Nchii State. In the case of the Nchii government, they own Mtego Nchii Inc through an intermediary State-owned business: Serikali Mining. Mtego Nchii Inc has a finance relationship with both the International Finance Corporation and the US government. Mtego International and Mtego Nchii Inc are part of the supply chain of Duka Diamonds. See section 1.2.2 Common Business Relationships for more information.

2. Which human rights have been adversely affected?

A list of the key human rights is available on pages 71-72.

Child labour

Child labour is illegal under international law. An explanation of how child labour can impact human rights can be found in section 1.3.3. The hiring of children in the mines is in violation of the prohibition on child labour and is also a potential violation of the rights to:

- education because if they are unable to attend schools;
- health because the nature of hazardous work is likely to hinder their development;
- life, if any of the children die due to hazardous working conditions.

Environmental damage and consequent displacement

The connection between environmental damage and human rights is discussed on page 41. Displacement and potential effects on human rights is discussed in section 1.3.5. The environmental damage caused by the chemicals in the water supply is likely to lead to the following human rights abuses:

- The rights to an adequate standard of living and to food – the chemicals damaged the Jamii community's ability to fish, which are the main sources of food for the Jamii people.
- The right to work – the destruction of areas used to fish also resulted in a loss of the main sources of livelihood for the Jamii people.
- The right to water – the chemicals polluted water used for drinking and other purposes.
- The right to health – the chemicals affected people's health.

The subsequent economic displacement of the Jamii tribe led to the following human rights abuses:

- The right to housing – they no longer have a place to live.
- The right to property – they have been forced to leave their property.
- The right to self-determination – as indigenous peoples they often have a deeply rooted spiritual and cultural relationship to the lands, territories and resources which they traditionally occupy or use. Hence, their right to self-determination as a people is likely to have been violated (see section 1.4.4).

Lack of consultation

The fact that the Jamii tribe were never consulted in the business activities led to the following human rights abuses.

- Right to participation – The right to community participation in decisions that affect them is not necessarily required in international human rights law. However, community participation in decisions that affect them is connected to the idea that respect for the inherent dignity of the individual means that each person's expertise, experience and input must be valued (see section 2.12).
- Right to free, prior and informed consent – For any business activities that use the land of indigenous peoples to start, the indigenous peoples must provide their free, prior and informed consent (see section 3.3.8).

Police misconduct

The police shootings and physical abuse of community members in detention is a violation of the following:

- Right to freedom of association – communities have the right to peaceful protest.
- Right to life – the two killed community members had their right to life violated.
- Right to liberty – those community members who were arrested and detained while carrying out a peaceful protest had their rights to liberty violated.
- Prohibition of torture and ill-treatment – those community members who were beaten up in detention had their right not to be subjected to cruel, inhuman and degrading treatment violated.

The right to an effective remedy was also violated due to the failure to provide remedy for the above human rights violations/abuses (section 1.3.9).

3. Which instruments are relevant to this scenario?

- The UN Guiding Principles on Business and Human Rights because they constitute the most authoritative global standard on business and human rights issues (see pages 60-61).
- The International Labour Organisation's Declaration on Fundamental Principles and Rights at Work and its eight fundamental Conventions because these contain a prohibition on child labour (see section 2.4.1).
- The UN International Covenant on Economic, Social and Cultural Rights and the UN International Covenant on Civil and Political Rights because these contain the principle list of human rights (see pages 71-72).

- The UN International Convention on the Rights of the Child because this situation concerns particular human rights impacts on children.
- The African Charter on Human and Peoples' Rights because Nchii is an African State.
- The Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter and the Convention on Biological Diversity because these are related to the environmental pollution of lakes (see page 123).
- The UN Declaration on the Rights of Indigenous Peoples because this scenario concerns indigenous peoples (see section 3.3.8).
- The UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials because this concerns the action of police (see section 3.4).
- The OECD Guidelines on Multinational Enterprises because the United States is an OECD State and is Mtego International's home State (see section 2.8).
- The Voluntary Principles on Security and Human Rights because this scenario concerns security arrangements (see section 3.4).
- The Voluntary Principles on Land Tenure because this scenario concerns displacement (see section 3.3.5).
- The International Finance Corporation's Performance Standards on Environmental and Social Sustainability because it invested in the business project (see section 2.7).
- The International Finance Corporation's Performance Standards on Security Arrangements (see section 3.4.4).
- The Fair Labour Association's Code of Conduct because Duka Diamonds is a member of the Fair Labour Association, a labour rights-related multistakeholder initiative (see page 122).

4. **What obligations/responsibilities does the Nchii government have?**

The Nchii government has the obligation to respect, protect and fulfil human rights. Its obligation to protect requires it to prevent, investigate, punish and redress human rights abuses committed by businesses (UN Guiding Principle 1), including all the human rights abuses mentioned under question 2.

Child Labour

In connection to the hiring of children, it is required, under the International Labour Organisation's Fundamental Conventions and the UN International Covenant on Economic, Social and Cultural Rights, to take necessary measures to eliminate child labour including:

- prohibiting the hiring of child labour by businesses;
- establishing an adequately staffed labour inspectorate to monitor compliance with rights at work; and
- establishing an inexpensive and accessible system to resolve allegations of non-compliance.

Environmental damage

The Nchii government is required to prevent environmental damage such as chemical dumping under various international environmental law standards including the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter and the Convention on Biological Diversity. Where projects are likely to have significant effects on biological diversity (in this scenario the effects of mining on fish living in the stream) then it must require that an environmental impact assessment be carried out first (Convention on Biological Diversity, article 14). This impact assessment should ensure that environmental harm is identified and prevented. It should also recognise communities' rights to participate in the decisions that affect them.

Several human rights are also relevant to environmental damage. The damage done to the Jamii community's fishing is likely to violate the right to an adequate standard of living including the right to food (International Covenant on Economic, Social and Cultural Rights, article 11). The African Commission on Human and Peoples Rights has ruled that the right to food is linked to the inherent human dignity and is essential to the enjoyment of other human rights.¹ It is therefore also protected by the African Charter of Human and Peoples Rights. The damage to fishing may also violate the right to gain a living through work (International Covenant on Economic, Social and Cultural Rights, article 6) as the Jamii people may suffer adverse impacts to their ability to earn themselves a living.

The pollution of drinking water could also constitute a violation of the right to an adequate standard of living (International Covenant on Economic, Social and Cultural Rights, article 11)² and the right to health (International Covenant on Economic, Social and Cultural Rights, article 12; African Charter on Human and Peoples Rights, article 16). This pollution could also violate the right to a general satisfactory environment (or right to healthy environment) under article 24 of the African Charter of Human and People's Rights.

Displacement

The Nchii government must respect, protect and fulfil the Jamii community's right to property (African Charter on Human and Peoples Rights, article 14) and housing (International Covenant on Economic, Social and Cultural Rights, article 11; implicit in the African Charter on Human and Peoples Rights). They are also required to recognise the Jamii community's rights to their land. This is supported by Guiding Principle 3 of the UN Guiding Principles on Business and Human Rights which requires States to review laws and policies to ensure that communities' entitlements in relation to ownership or use of land are recognised.

1 African Commission on Human and Peoples' Rights, 'Communication No. 155/196: The Social and Economic Rights Action Centre and Centre for Economic and Social Rights / Nigeria' (2001). www.achpr.org

2 Committee on Economic, Social and Cultural Rights, 'General Comment 15 for the recognition of the right to water within the International Covenant on Economic, Social and Cultural Rights' (2003). www2.ohchr.org

The Voluntary Principles on Responsible Land Tenure state that States should:

- recognise and respect all community members' rights to land, whether their rights to land are formally recorded or not;
- safeguard rights to land against threats and infringements, including forced evictions;
- promote and facilitate the enjoyment of legitimate tenure rights;
- provide access to justice to deal with violations of rights to land; and
- provide access to effective judicial remedies for negative impacts on human rights and rights to land by businesses.

The UN Declaration on the Rights of Indigenous Peoples requires business projects on land used by indigenous peoples to have the free, prior and informed consent of indigenous peoples before they can start (article 10). They must be given prior to the government allocating or approving the land for a business project. They must be informed, all relevant information must be communicated in understandable language, and there must be access to the advice of independent experts. Here the Jamii community did not give any consent and so the Nchii government violated this right. The right of the Jamii community to self-determination is supported in article 20 of the African Charter for Human and Peoples Rights and in article 1 of both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

Police misconduct

The Nchii government's police force is required to respect the following:

- The right to freedom of association (International Covenant on Civil and Political Rights, article 22; African Charter on Human and Peoples Rights, article 11);
- The right to life (International Covenant on Civil and Political Rights, article 6; African Charter on Human and Peoples Rights, article 4);
- The right to liberty (International Covenant on Civil and Political Rights, article 9; African Charter on Human and Peoples Rights, article 16); and
- The prohibition of torture and ill-treatment (International Covenant on Civil and Political Rights, article 7; African Charter on Human and Peoples Rights, article 5).

The UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials provides useful guidance on what actions governments must take in relation to the use of force by law enforcement officers. It states that:

- No force can never be used against lawful assemblies of civilians including peaceful protest (Principle 12). If assemblies are peaceful but non-violent, police should restrict their use of force (Principle 13). Police cannot use lethal or other serious forms of force against peaceful assemblies, whether legal or illegal.
- Police shall not use force against prisoners, and other persons in detention, except for their own safety, the safety of others or the security of the prison (Principle 15). Hence the police could not abuse prisoners in detention.

The Voluntary Principles on Security and Human Rights provide for similar requirements on law enforcement officials.

Access to effective remedy

Under all of these human rights, the Nchii government is required to take adequate steps to remedy the human rights abuses committed by the business (International Covenant on Civil and Political Rights, article 2). This would require that courts function effectively. UN Guiding Principle 25 provides a list of criteria that effective courts must fulfil which includes that:

- they do not erect barriers to prevent people from having their case heard in court;
- there are options to make claims that ensure more than one person receive remedy where human rights abuses affect multiple people or whole communities;
- human rights defenders activities in documenting and reporting human rights abuses are not obstructed;
- the costs of bringing claims to courts are not too high;
- everyone has access to a lawyer;
- there is the option for community members to have one court case heard together rather than each person having to have their own case heard individually; and
- State prosecutors have adequate resources, expertise and support to investigate individuals and businesses in human rights-related crimes.

In this case, many Jamii community members could not afford to go to court. The Nchii State has an obligation to ensure access which it could do by reducing fees, providing legal aid and allowing all community members to take their case at once.

Remedies include apologies, restitution, rehabilitation, financial or non-financial compensation and punitive sanctions, as well as the prevention of future harm. In this case:

- Apologies would require that relevant government officials, including the police, apologise for their role in any human rights violations.
- Restitution would require that the Nchii State restore the Jamai communities land and fishing waters to what they were before by cleaning up the environmental damage. This is enshrined in the Voluntary Guidelines on the Responsible Governance of Tenure (para 4.9) and article 28(1) of the UN Declaration on the Rights of Indigenous Peoples which states ‘Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.’ Compensation for land lost should include land-for-land compensation which requires that the Jamii community is provided with new land which should be:
 - equivalent or superior in the potential to provide a good livelihood than the previous land.
 - located as close as possible to the previous land.
 - provided free of any “transaction costs” such as registration fees, transfer taxes, or customary tributes.
 - prepared (cleared, leveled, and made accessible) for livelihoods as similar as possible to that of the previous land. Preferably, the people employed to do this work should be from the affected communities.

- Rehabilitation would require medical services be provided for anyone who suffered illness as a result of the pollution or injury at the hands of the police.
- Compensation would require that the Jamii community were compensated for any harm or loss of income that resulted from the environmental damage and their displacement from their land. It would also require compensation for the damage caused by the police officers including compensation to the families of the two deceased protestors.
- Punitive sanctions would require that the business received fines or criminal sanctions as a result of their damage to the environment.
- The prevention of future harm would require that the Nchii government pass effective laws, policies and regulations to prevent future human rights abuses. This would include recognising the Jamii community's rights to their land and to participate in decisions that affect them. It would also require that impact assessments are required for future projects and monitoring bodies are set up to prevent future environmental damage. Finally, it would require that police receive adequate training and monitoring to ensure that future acts of police brutality do not occur.

State-business relationship

In addition to all the above human rights law requirements, the Nchii government is part owner of Mtego Nchii Inc and is required to take additional steps to ensure that Mtego Nchii Inc respects human rights due to its close relationship (UN Guiding Principle 4 Commentary). It should also ensure that any legal license that Mtego Nchii has to mine near the Jamii community does not include terms that would lead to violations of the Jamii community's rights and includes provisions that require Mtego Nchii Inc to respect human rights (UN Guiding Principle 6).

5. What obligations/responsibilities does the US government have?

Home States are required to prevent businesses committing human rights abuses abroad through legal or political means. The content of this obligation is disputed. The UN Guiding Principles on Business and Human Rights provide examples of actions that the US State could take with respect to this scenario (see pages 63-66):

- Changing corporate law to ensure that businesses are encouraged to respect human rights abroad. This could include making human rights due diligence mandatory and/or ensuring that parent businesses are responsible for subsidiaries they own and Joint Ventures they have partial ownership of.
- Creating and implementing reporting requirements that businesses report on what steps they take to ensure that their investments and supply chains do not result in human rights abuses.
- Taking part in soft law initiatives to prevent human rights abuses abroad.
- Ensuring that they invest responsibly in business projects. In this scenario the US government lent money to the business project. They could require this investment be optional upon a good human rights performance.
- Having their courts listen to (exercise extraterritorial jurisdiction over) human rights harms that were committed abroad.

- Under the Voluntary Guidelines on Land Tenure the US government would be required to:
- assist the host State (Nchii) and international businesses (Mtego International) in the prevention of human rights abuses and violations of rights to land; and
 - take additional steps to prevent human rights abuses and violations of rights to land because in this case the business is supported by the host State.

Under the Voluntary Principles on Security and Human Rights, the US government should help support business impact/risk assessments through, for instance, having their embassies ask the host State's government about security risks, including the possibility of disproportionate force by law enforcement officials.

Under the OECD Declaration, the United States is legally bound to set up a National Contact Point to investigate complaints against businesses for failing to implement the OECD Guidelines for Multinational Enterprises. Complaints can be made to National Contact Points regarding a business based in the OECD State, regardless of where the human rights abuses take place. Hence, communities must have the option to lodge their complaints regarding Mtego International with the US National Contact Point.

6. **What obligations/responsibilities does Mtego International/Mtego Nchii Inc have?**

Mtego has a responsibility to respect human rights contained in the International Bill of Rights and the eight fundamental ILO Conventions. This requires it to identify, prevent, mitigate, account for and remedy adverse human right impacts (described in detail under questions 2 and 4) which it causes or contributes to. Under the UN Guiding Principles on Business and Human Rights, Mtego is required to adopt a human rights policy, carry out human rights due diligence and remediate adverse human rights impacts. Due diligence requires Mtego to go through the following stages:

1. Initial Assessment – Mtego must identify and assess any potential adverse human rights impacts their activities may cause, contribute to, or may be caused by entities which they are directly linked to. Where communities are likely to be affected, the businesses should carry out meaningful consultations recognising the communities' right to participate in decisions which affect them. Businesses should ensure that communities are informed of the project, including the risks and potential effects that the business project may have. They should do this in language that the community prefers and can understand.
2. Taking Measures – Mtego should take measures to prevent and mitigate any potential adverse human rights impacts before they happen. They should inform communities of what measures they have taken to prevent and mitigate further adverse human rights impacts.

3. **Tracking (Checking)** – Mtego should check whether these measures have been successful in the prevention of adverse human rights impacts. In doing so they should consult the communities.
4. **Remedy** – Mtego should provide remedy for any impact that they have caused or contributed to. See ‘access to remedy’ on the next page.
5. **Communication** – Mtego should communicate what adverse human rights impacts they have identified and what steps they have taken to prevent potential adverse human rights impacts and provide remedy for actual adverse human rights impacts to affected communities.

Child Labour – Mtego should not have hired any children, should not carry out the exercise in future and should provide remedy to children for any harm caused as a result of the exercise.

Environmental damage – In order to prevent environmental damage, Mtego should have carried out an impact assessment in order to identify and prevent any potential damage to the environment. This impact assessment should have recognised the Jamii community’s right to participate and their right to say no to the project (as part of their right to free, prior and informed consent).

Displacement – The responsibility to respect human rights with respect to land and to provide remedy is also included in the Voluntary Guidelines on the Responsible Governance of Tenure.

Police – Businesses also have a responsibility to ensure they investigate, prevent, mitigate and account for adverse human rights impacts that they are directly linked to. The Voluntary Principles on Security and Human Rights provide guidance on the responsibilities of extractive businesses with regard to law enforcement officials including that they should:

- consult with governments and communities about the effects of their security arrangements on communities;
- ensure that government officials implicated in human rights abuses do not provide security services to them;
- ensure that force is only used when strictly necessary and proportional to the threat;
- ensure that communities’ and workers’ rights to protest and form a trade union are respected;
- report incidents of violence to the relevant authorities. Where appropriate, they should urge governments to carry out an effective investigation of the incident;
- ensure that authorities are provided with all the relevant evidence of any crimes;
- monitor the use of any equipment they have provided to State security forces (including both lethal and non-lethal weapons) and ensure that they are not used to commit human rights abuses.

Access to remedy – A business’s responsibility to respect human rights requires it to provide remedy (Guiding Principle 22), by itself or in co-operation with others, such as courts, States, International Organisations, International Financial Institutions, multistakeholder initiatives and other businesses. One way a business can provide remedy directly is to set up its own non-judicial grievance mechanism. This mechanism must meet the following criteria to be deemed effective:

- Not obstruct access to courts.
- Be agreed upon with the community, taking into account the community’s view of what an effective remedy is.
- Be based on open conversation between community members and the business. Processes set up between the communities and the business must be designed with the participation of community members. A business’s relationship with communities is less likely to succeed if talks over remedying human rights abuses do not take place as part of wider talks about the relationship between a business and a community.
- Pay particular attention to vulnerable peoples and take account of the different risks faced by men and women.
- Be transformative. Any remedy should seek to overcome power relationships between the community and the business.
- Ensure that processes are legitimate and are trusted by communities.
- Be accessible by everyone who has a complaint against the company regarding a human rights abuse or any other wrong.
- Have a clear and known procedure with an indicative time frame for each stage and provide information about the process’s performance.
- Ensure that communities have reasonable access to sources of information, advice and expertise so they can make informed opinions.
- Ensure that outcomes and remedies accord with internationally recognised human rights.

These requirements are included in UN Guiding Principle 31 and the OHCHR’s Interpretive Guide to the Corporate Responsibility to Respect.

7. What obligations/responsibilities does Duka Diamonds have?

Duka Diamonds has a responsibility to respect human rights, as recognised in the UN Guiding Principles on Business and Human Rights. It has also voluntarily signed up to the Fair Labour Association’s Code of Conduct which requires it to meet certain labour standards in its own operations and in its supply chains. Duka Diamonds is directly linked to the adverse human rights impacts that result from Mtego’s business activities because Mtego is in its supply chain. Duka Diamonds has a responsibility to investigate, prevent, mitigate and account for all adverse human rights impacts that it is directly linked to.

Duka Diamonds could include requirements in their contract with Mtego that Mtego respects human rights. These requirements may include a code of conduct which includes both labour rights and other human rights, as well as monitoring and auditing by either the business or an independent third party. Auditing means that Mtego will be regularly subjected to inspections to ensure they are respecting human rights. In order to ensure that monitoring and investigations are independent and transparent, Duka Diamonds can potentially carry out this work with the Fair Labour Association.

Duka Diamonds should also take action to end the adverse human rights impacts that result from Mtego's activities. This includes exercising leverage over Mtego to prevent adverse human rights impacts. In this case relevant action that Duka Diamonds could take would be:

- to sue Mtego for breach of any human rights provisions included in its contract with Mtego;
- to commit to only continuing to buy from Mtego if it stops its adverse human rights impacts;
- to state it will only recommend Mtego to other businesses if Mtego stops its adverse human rights impacts;
- to provide trainings to Mtego's employees on how to respect human rights;
- to encourage Mtego to join a human rights-based multistakeholder initiative; and
- to inform the Nchii government of adverse human rights impacts that have resulted from Mtego's activities and inform them to take action against the actor.

If Duka Diamonds exercises its leverage and then Mtego continues to commit adverse human rights impacts then it should ordinarily terminate its relationship with the business. In deciding whether to terminate its relationship with the business, it should take account of any potential adverse human rights impacts that would result from doing so.

8. What obligations/responsibilities does the International Finance Corporation have?

The International Finance Corporation is part of the World Bank Group, an international financial institution. The International Finance Corporation has adopted the International Finance Corporation Performance Standards on Environmental and Social Sustainability. These standards do not include an obligation to respect human rights. However, they do include standards which relate to environmental and social impacts (including carrying out an environmental and social impact assessment), labour conditions, pollution prevention, health, safety and security, land acquisition, biodiversity, indigenous peoples and cultural heritage. The International Finance Corporation has a non-judicial mechanism (the Compliance Advisor Ombudsman) whereby complaints may be submitted with regards to its performance under these standards.

9. What pressures exist on Mtego International to respect human rights?

Mtego International will want to protect its reputation in order to attract business from customers (such as Duka Diamonds), finance from investors (such as the US government and the International Finance Corporation) and future business with the Nchii government. It will be required to meet the terms of any legal license it has with the Nchii government. It will also want to have good relationships with the Jamii community (a social license to operate) in order to avoid protests and other community actions which may negatively affect their business operations or reputation. Finally, respecting human rights will help it avoid potential lawsuits both in Nchii courts and in US courts.

10. What potential alternative routes to remedy do the Jamii community have if Mtego Nchii Inc and the Nchii government do not provide effective remedy?

The Jamii community can take part in local, national and international campaigns to draw attention to their human rights concerns. They can also bring their complaints to various other actors. The following potential avenues of redress are available:

- a complaint could be taken to the UN Human Rights Council;
- trade unions may potentially submit complaints regarding child labour to the International Labour Organisation;
- if the Nchii government has ratified the relevant treaties, individual complaints could be taken to various international human rights treaty bodies;
- if the Nchii government has ratified the relevant treaties, NGOs could submit submission regarding the Nchii government's human rights performance during reviews of the Nchii government's human rights performance;
- a complaint could be submitted with the African Commission on Human and Peoples Rights or another relevant African International Tribunal (see page 90);
- a complaint could be submitted to the Nchii National Human Rights Institution if it had one;
- a complaint could potentially be taken to US courts, although many barriers exist to taking such action (pages 46 and 127);
- a complaint could be taken to the US National Contact Point under the OECD Guidelines for Multinational Enterprises;
- a complaint could be taken to the Fair Labour Association;
- a complaint could be taken to the International Finance Corporation under their non-judicial grievance mechanism: the Compliance Advisor Ombudsman;
- a letter could be sent to a relevant UN Special Rapporteur such as the UN Special Rapporteur for Indigenous Peoples; and
- letters could be sent to various international human rights civil society organisations to ensure community voices are heard.

None of the answers to these questions are exhaustive, and there are other relevant human rights and standards in relation to this scenario.

Acronyms

AfDB	African Development Bank
CAO	Compliance Advisor Ombudsman
CBO	Community-based Organisation
COMESA	Common Market for Eastern and Southern Africa
DRC	Democratic Republic of the Congo
EAC	East African Community
ECOWAS	Economic Community of West African States
EIB	European Investment Bank
EU	European Union
FPIC	Free, Prior and Informed Consent
ICC	International Coordinating Committee
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
IFC	International Finance Corporation
IMF	International Monetary Fund
ILO	International Labour Organisation
NAP	National Action Plan
NCP	National Contact Point
NGO	Non-governmental organisation
NHRI	National Human Rights Institution
OECD	Organisation for Economic Co-operation and Development
SADC	Southern African Development Community
UDHR	Universal Declaration of Human Rights
UK	United Kingdom
UN	United Nations
UNESCO	United Nations Educational, Scientific and Cultural Organisation
UNICEF	United Nations Children's Fund
US	United States
WWF	World Wide Fund for Nature

Glossary

A

- **Access to Remedy** – access to remedy is a term used to refer to a victim's right to remedy for any human rights harms they have suffered. Access to remedy is the basis of the third pillar of the UN Guiding Principles on Business and Human Rights: Protect, Respect, Remedy. States must take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that when such abuses occur within their territory and/or jurisdiction those affected have access to effective remedy.
- **Adjudication** – adjudication is where an independent third party provides a formal judgement on a particular dispute. This is normally a judge in a courtroom, but it can also take place outside of a courtroom, such as when an Ombudsman makes a decision on a particular dispute.
- **Administrative** – refers to actions taken by government agencies.
- **African Commission on Human and Peoples' Rights (ACHPR)** – a treaty body with the mandate to ensure the promotion and protection of human rights on the African continent, in accordance with the African Charter on Human and Peoples' Rights.
- **African Development Bank** – an International Financial Institution set up by the African Union which states that its mission is to fight poverty and improve living conditions on the continent through promoting investment in projects and programmes that contribute to development.
- **African Union** – an International Organisation consisting of 54 States in Africa.

B

- **Bribery** – the offering, giving or receiving of any item of value to influence the actions of an official.
- **Budget** – a government's budget refers to the money (that it receives from taxes and other revenues) which it can spend.

C

- **Civil Society Organisation** – non-governmental organisations which are independent from the government and ideally reflect the will of citizens.
- **Civil wrongs** – when one individual has intentionally done harm to another person or where one individual has accidentally done harm to another person but is still responsible because he or she did not take reasonable steps to prevent the possibility of the harm.
- **Climate change** – refers to the rising average temperature of the Earth's climate system and its related effects. This is largely caused by human activities, particularly the burning of oil, coal and gas.
- **Community** – a group of people who share something in common, such as norms, values, identity, and often a sense of place such as a village, town or neighbourhood.

- **Community-based Organisation** – an organisation that provides social services or campaigns at the local level and relies mainly on community members for labour, material and financial support.
- **Complaint** – an expression of dissatisfaction with the current state of affairs. Often complaints can be heard and dealt with by different actors, either through dialogue or a formalised complaints mechanism.
- **Corruption** – the abuse of entrusted power for private gain. For example, where government officials entrusted with the power to tax businesses to raise money for public services take the money and spend it on themselves instead.
- **Customary International Law** – a custom is a long-established practice considered as unwritten law. Customary international law is unwritten international law that develops from the consistent practice of States toward each other.

D

- **Displacement** – when communities and/or individuals are forced to leave their homes. Physical displacement is when communities are made to move away from their land. Economic displacement is when communities move away from their land themselves because they can no longer use it to maintain their livelihood.
- **Due diligence** – due diligence refers to two separate concepts in business and human rights. The first are the standards that a State must take to exercise its obligation to protect: to prevent, investigate, punish and redress human rights abuses by non-State actors. The second are the steps that a business must take to exercise its responsibility to respect: to investigate, prevent, mitigate, account for and remedy adverse human rights impacts. All references to due diligence in this handbook refer to the responsibility of the business, unless stated otherwise.
- **Duty to protect** – the term used in the UN Guiding Principles on Business and Human Rights which refers to actions a State must take to prevent, investigate, punish and redress human rights abuses by businesses. It is grounded in recognition of States' international human rights law obligation to protect.

E

- **Economic globalisation** – the increasing economic integration and interdependence of national, regional, and local economies across the world through increased cross-border movement of goods, services, technologies and capital.
- **European Investment Bank (EIB)** – an International Financial Institution of the European Union.
- **European Union (EU)** – an International Organisation consisting of 28 Member States in Europe.
- **Extractive** – refers to removal of natural resources (resources found in nature) including oil, gas, coal, minerals and wood.
- **Extraterritorial Human Rights Obligations** – the obligations of States to take actions contributing to the realisation of human rights outside of their own territory.
- **Extraterritorial jurisdiction** – refers to when a State's courts make judgements over events that occurred outside of that State's territory.

F

- **Finance** – refers to providing money for something, often with the attention that more money be returned later.
- **Financial institutions** – refers to any actor which provides financial services. This includes privately-owned and State-owned financial institutions, and it also refers to International Financial Institutions.
- **Free trade** – a policy where States do not place restrictions on imports from, or exports to, other States.

G

- **Grievance** – a complaint that an individual or community has when they believe they have been wronged.
- **Grievance Mechanism** – refers to any kind of process which aims to resolve the complaints of individuals or communities where they believe they have been wronged.
- **Guiding Principles on Business and Human Rights** – a non-binding instrument which represent a global standard for preventing and addressing human rights abuses linked to business activity.

H

- **Home State** – a State an international business is based in, either because the parent business is incorporated there or because its headquarters is there.
- **Host State** – a State, apart from the home State, where an international business is carrying out activities.
- **Human rights abuse** – damage to or denial of a person's human rights by a person or people who are not State officials or acting on behalf of the State. When a State carries out a similar act, it is called a human rights violation.
- **Human Rights Council** – a United Nations body which requires States to report on their implementation of their human rights obligations and allows for the review of States' human rights performance by other States.
- **Human rights defender** – a person who promotes and protects human rights by non-violent means.
- **Human rights impact** – an action that affects the ability of an individual to enjoy his or her human rights. A positive human rights impact improves the ability of an individual to enjoy their human rights. An adverse human rights impact reduces or removes an individual's ability to enjoy their human rights.
- **Human rights violation** – this occurs when a State, or person acting on behalf of the State, fails to meet any of its human rights obligations to respect, protect and fulfill.

I

- **Industry initiative** – a group of businesses in a particular industry which has human rights-related (or social or environment-related) standards in codes of conduct, performance standards and/or agreements with affected communities.
- **Informal economy** – work that is partly or fully outside of government regulation, taxation, and inspection.

- **Injunction** – a court order which requires an end to the illegal activity.
- **International business** – a business which operates in different States.
- **International Finance Corporation** – an International Financial Institution which is part of the World Bank Group and provides loans directly to businesses.
- **International Financial Institution** – an International Organisation which provides financial services.
- **International humanitarian law** – International law obligations which apply to States and non-State actors (including businesses) during periods of armed conflict.
- **International instrument/standard** – refers to any codified text which States and/or International Organisations endorse. It includes both treaties and instruments which do not create binding international obligations but nonetheless have normative force due to their acceptance amongst States (sometimes referred to as soft law).
- **International Labour Organisation (ILO)** – an agency of the United Nations. It establishes labour standards dealing with employment and work, reviews reports submitted by Member States detailing the measures they have taken to implement the provisions of ratified Conventions and receives complaints from trade unions, and others, regarding a failure of a State to implement the provisions of ratified conventions or respect collective bargaining rights.
- **International Monetary Fund (IMF)** – an International Organisation which aims to increase monetary co-operation, secure financial stability, facilitate international trade, promote high employment and sustainable economic growth and reduce poverty.
- **International Organisation** – any institution which has an international membership or is present in different States. In this book the term International Organisation refers to those organisations which are created by and made up of States.
- **Investment** – finance provided for a particular project or business in order for the investor to receive benefits from the project later (e.g. a loan or purchase of shares).
- **Investment contract** – an agreement between the State where the business is operating (host State) and the business itself which aims to ensure that a business's investment in that State is protected.
- **Investment treaty** – an agreement between the State where the businesses are operating (host State) and the State where the businesses are based (home State) which aims to protect the investment in the host State by businesses from the home State.
- **Investor** – an individual or business which provides finance for, or investment in, a particular project or business in order to receive benefits from the project later (e.g. a bank).

J

- **Joint Venture** – when a business is set up in a country and is owned by more than one actor.
- **Judicial** – refers to actions of courts. A judicial mechanism is a court.
- **Jurisdiction** – refers to the authority of government bodies to pass laws (prescriptive jurisdiction), enforce laws (enforcement jurisdiction) and have their courts make decisions on particular disputes (adjudicative jurisdiction).

L

- **Labour Rights** – Labour rights refer to fair and just treatment at work. They are at the heart of the fight for human rights (including the freedom to associate, to organise, and to have equal opportunities in the workplace), and many are often considered to be human rights.
- **Lawsuit** – where someone decides to take a person or entity to court.
- **Legal license** – Where a State issues a permit to a business to use and control the land they require for their operations (such as mining, oil extraction and logging). Often the legal license will include terms the business should obey.
- **Legislative/legislation** – legislative refers to the creation of laws. Legislation refers to law themselves.

M

- **Member States** – States which are a member of a particular International Organisation or other initiative.
- **Multistakeholder initiative** – a group of businesses, civil society organisations and others which has human rights-related (or social or environmental-related) standards in codes of conduct, performance standards and/or agreements with affected communities.

N

- **National Contact Point (NCP)** – OECD Member States are legally bound to set up National Contact Points to investigate complaints against businesses for failing to implement the OECD Guidelines for Multinational Enterprises. Complaints can be made to National Contact Points regarding a business based in the OECD State, regardless of where the human rights abuses take place.
- **National Human Rights Institution (NHRI)** – an administrative body set up to protect or monitor human rights.
- **Nationalisation** – where a State takes ownership or control of an industry, or part of an industry, previously run by businesses.
- **Natural resources** – refers to anything that people can use which is found in nature. Examples are oil, minerals and wood. Businesses which remove natural resources are called extractive businesses.
- **Non-governmental Organisation (NGO)** – a not-for-profit organisation which is independent from States and International Organisations.
- **Non-judicial grievance mechanism** – refers to any kind of process which aims to resolve complaints which is not a court.

O

- **Obligation** – a duty placed on an actor by national or international law.
- **Obligation to Fulfil** – the obligations that States have to take steps to ensure that everyone has full enjoyment of their human rights including enabling and assisting people to enjoy their rights, ensuring people understand their rights and, where people cannot enjoy their human rights without help, providing help so they can enjoy their human rights.

- **Obligation to Protect** – the obligations that States have to make sure that non-State actors, including businesses, do not unduly interfere with peoples' enjoyment of their rights.
- **Obligation to Respect** – the obligations that States have to ensure they do not unduly interfere with peoples' enjoyment of their rights.
- **OECD Guidelines for Multinational Enterprises** – recommendations for responsible business conduct for international businesses operating in or from OECD States and adhering countries. They include ethical standards on employment, human rights, the environment, transparency, corruption, taxation and other standards.
- **Ombudsman** – a public official who works independently from government to ensure proper public administration.
- **Organisation for Economic Co-operation and Development (OECD)** – an international economic organisation of 34 rich countries founded to stimulate economic development and world trade including most European countries as well as the USA, Canada, Mexico, Australia, New Zealand, Israel, Egypt, Japan and South Korea. No sub-Saharan African countries are currently members.

P

- **Parent (Business)** – where one business owns another business, the business who owns the other business is called the parent business.
- **Pillage** – the unlawful taking of private property for personal or private use during armed conflict.
- **Policy** – a government's, business's, International Organisation's or other actor's declared goals and objectives concerning a particular topic such as the environment or human rights. Policies should include indicators and benchmarks to track progress towards particular policy goals.
- **Privatisation** – when States contract out public services to businesses.
- **Public services** – services a State must provide to ensure it meets its human rights obligations such as schools, healthcare and policing.

R

- **Ratification** – when a State ratifies a treaty it agrees to be bound by the obligations in the treaty.
- **Regulate** – to bring under the control of law or other governmental authority.
- **Remedy** – in the context of human rights, a remedy must 'make good' any human rights harms that have occurred. Remedies include apologies, restitution, rehabilitation, financial or non-financial compensation, punitive sanctions and the prevention of harm.
- **Responsibility to respect** – the business responsibility to respect is based on the role of businesses as specialised organs of society performing specialised functions which are required to comply with all applicable laws and to respect human rights: to investigate, prevent, mitigate, account for and remedy all adverse human rights impacts.

- **Right to participation** – the right to community participation in decisions that affect them is not expressly mentioned in international human rights law treaties. However, community participation in decisions that affect them is connected to the idea that respect for the inherent dignity of the individual means that each person's expertise, experience and input must be valued. Every person is a valid speaking partner with a unique and valuable knowledge to contribute.

S

- **Social license** – where large scale developments affect communities directly, there should be approval from the community for the project. This approval is called a social license.
- **Soft law** – the term 'soft law' refers to instruments which are not legally binding, but which do have a strong moral force because they have been officially adopted by International Organisations and/or States.
- **Subsidiary** – where one business owns another business, the business who is owned by the other business is called the subsidiary business.
- **Supply chain** – supply chains refer to the other businesses that supply a business with goods and/or services, and it also refers to all the businesses that supply the suppliers with goods, and the businesses that supply them and so on.

T

- **Tort** – see 'civil wrongs'.
- **Trade union** – an organised association of workers which aims to protect and further their rights and interests.
- **Treaty** – a binding agreement under international law entered into by parties who are subjects of international law (mainly States and International Organisations). Treaties have different names including charter, convention, covenant, pact and protocol.
- **Treaty body** – an institution set up by a treaty to monitor how States implement their treaty obligations.

W

- **World Bank Group** – an International Financial Institution which provides loans both to States and businesses for infrastructure projects. Its main shareholder is the United State of America. The institutions within the World Bank Group that lend to States are the International Bank for Reconstruction and Development and the International Development Association (both of which together are referred to as the World Bank). The International Finance Corporation is an institution within the World Bank Group which provides loans directly to businesses.

V

- **Vulnerable groups** – a group of people that face additional difficulties due to the way society is organised, due to the prevalence of discriminatory practices. Without these discriminatory practices, these people can be independent and equal in society, with choice and control over their own lives.

Notes

- 1 Human Rights Watch, 'The Price of Oil: Corporate Responsibility and Human Rights Violations in Nigeria's Oil Producing Communities' (1999) www.hrw.org/reports/1999/nigeria/nigeria0199.pdf
- 2 Amnesty International, *Injustice Incorporated: Corporate Abuses and the Right to Remedy* (2014) pages 173-198 www.amnesty.org/download/Documents/8000/pol300012014en.pdf
- 3 Global Witness, 'Heavy Mittal? A State Within a State: the inequitable mineral development agreement between the government of Liberia and Mittal Steel Holdings' (2006) www.global-witness.org/sites/default/files/pdfs/mittal_steel_en_oct_2006_low_res.pdf
- 4 Herbert Smith Freehills, 'South Africa Terminates its Bilateral Investment Treaty with Spain: Second Bit Terminated, as Part of South Africa's Planned Review of its Investment Treaties' (21 August 2013) www.hsfnotes.com/arbitration/2013/08/21/south-africa-terminates-its-bilateral-investment-treaty-with-spain-second-bit-terminated-as-part-of-south-africas-planned-review-of-its-investment-treaties/ See also, John Ruggie, *Just Business* (WW Norton and Co, 2013), pages 59, 87 and 184.
- 5 UN Human Rights Council 'Business and human rights: mapping international standards of responsibility and accountability for corporate acts', A/HRC/4/35 (19 February 2007), paragraphs 82-83 <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G07/108/85/PDF/G0710885.pdf?OpenElement>. See also, UN Human Rights Commission, 'Interim Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises', E/CN.4/2006/97 (22 February 2006) <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G06/110/27/PDF/G0611027.pdf?OpenElement> and John Ruggie, *Just Business* (WW Norton and Co, 2013).
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